JSTOR Primary Sources

Criminal correction: remarks and suggestions upon a consistent and uniform system of punishment ; including comments on the reports of the Commissioners appointed to inquire into the operation of the Acts relating to transportation and penal servitude, and of the Select Committee of the House of Lords on the Present State of Discipline in Gaols and Houses of Correction

Source: *JSTOR Primary Sources*, 01-01-1864

Contributed by: Measor, Charles Pennell

Stable URL: https://www.jstor.org/stable/60100728

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

This item is part of a JSTOR Collection.
For terms of use, please refer to our Terms & Conditions at https://about.jstor.org/terms/#whats-in-jstor

*JSTOR Primary Sources* is collaborating with JSTOR to digitize, preserve and extend access to *JSTOR Primary Sources*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

# CRIMINAL CORRECTION.

---

## REMARKS AND SUGGESTIONS

UPON A CONSISTENT AND UNIFORM SYSTEM

OF

## PUNISHMENT;

INCLUDING COMMENTS ON THE REPORTS

OF

THE COMMISSIONERS APPOINTED TO INQUIRE INTO THE OPERATION OF THE ACTS

RELATING TO

## TRANSPORTATION AND PENAL SERVITUDE,

AND OF

THE SELECT COMMITTEE OF THE HOUSE OF LORDS

ON THE

PRESENT STATE OF DISCIPLINE IN GAOLS AND HOUSES OF CORRECTION.

BY

C. P. MEASOR, ESQ.,

Sub-Inspector of Factories,

AND

Late Deputy-Governor of Chatham Convict Prison.

LONDON:

WILLIAM MACINTOSH, 24, PATERNOSTER ROW, E. C.;

BRADFORD: G. F. SEWELL, DARLEY STREET.

1864.

*Price One Shilling.*

This content downloaded from 149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

# CRIMINAL CORRECTION,

&c., &c.

---

To those who acknowledge that

"The proper study of mankind is man,"

and who have entered so far into the fundamental problem of human nature as to study upon any system of ancient, modern, heathen, or Christian ethics, the nature and growth of evil, it will be a matter of small wonder that the principles of what is now known as Reformatory Science, should be cavilled at and disputed; or that one of the most difficult and ever-recurring problems of an age which prides itself on having discovered the secret science and system of most things, and is possessed of countless theories upon pain and pleasure, happiness and misery, vice and virtue, creation and destruction, improvement and decay, should consist in what constitutes crime, what principle of moral inoculation will prevent or stay its progress, and what curative process is best calculated to secure its alleviation or extinction. The commonest questions relating to Penal Laws, Criminal Treatment, and Prison Discipline, are in fact so inextricably interwoven with the very basis of society, and some view of a moral system, that from the diverse starting points from which they can be regarded, it is doubtful whether any general concurrence as regards them would often have been arrived at, were it not that the paramount interest of society steps in to save it from what would otherwise threaten its dissolution, and has often necessitated in certain cases the adoption of means against which the moral sense of the majority has, in all probability revolted. It is therefore as little to be wondered at when, in matters essential to the society's self-protection, custom had long established a system of rough justice, that, in ages jealous of change, cruelty and disproportionate punishment should have been perpetuated; as it is an



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

inconsistency not impossible of reconciliation that Christianity herself should have adopted, in times of great enlightenment, a penal code of blood-stained severity, or that some of the most pious dignitaries of the Church of England, and the most learned and moral of our judges, should have lent the support of their power and eloquence to perpetuate the humiliating spectacle which our punishments and prisons offered so very recently to the gaze of civilization. Religion, in this matter, was evidently brought into subordination to custom; and the Church, not apparently even professing to mould the administration of worldly justice, or to infuse into it the benign spirit of Christianity, simply adopted, in an unquestioning mood, those devices of torture and cruelty which the civil power had so long regarded as the very mainstay and support of society.

How else shall we account for the fact that the Episcopal Bench, and the wisdom, worth, and learning of the judgment seat, combined until the present century to uphold a system utterly irreconcilable with Divine Revelation? The dread archon of Athens, who laid down the principle that the smallest crime deserved death, and that there was consequently no other punishment for the greatest, consistently visited the loss of an apple with his sole available penalty; but he was far outstripped in needless severity by the ministers of that religion whose Divine Author had supplanted the Judaical "*lex talionis*" by the holy principle of forgiveness of injuries, when they rendered their legislative aid to retain on our blood-stained statute book the law which extended Christian England's universal panacea for crime to the theft of a pocket-handkerchief by a hungry boy. We are now so utterly ashamed of this past inhumanity, that we can scarcely realize that it is only two generations since we hanged for the theft of one shilling; for a sheep; for a horse; for cattle; coining, witchcraft, and forgery; or that in the last century one hundred and fifty offences were statutably capital.*

* Mr. O'Connell states in his speech in "Rex v. Magee," that on one circuit in Ireland, one hundred prisoners were tried before one judge, of whom 98 were capitally convicted, and 97 were positively hanged. Within the present century, 116 executions took place for forgery within four years, and the law which rendered stealing to the value of five shillings a capital offence had no less than 119 victims on the gallows within the twenty years previous to its abolition.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Superadded to this revolting phase of a former system, terror was the only recognised object of punishment. Whatever the prisoner's crime, he was thrust into a noisome dungeon, where, by cold, dirt, vermin, and starvation, he was supposed to undergo a salutary disabling process.* The idea of doing good to a fellow-being dur-

* Terror, and what Bentham calls *incapacitation*, were the only means to which jurisprudence resorted:—terror excited by capital punishments of merciless frequency. which, while they aimed, with no great success, at appalling the multitude, had at least the effect of for ever incapacitating the culprit from repeating his offences. Neither was this perpetual incapacitation confined to the victims of the gallows. On the contrary, numerous as these were, they formed but a small fraction of the whole number disabled from further evil doing by death. Starvation was but too often the lot of the unhappy prisoner. And these cases were not exceptional. In the first volume of the Rolls of Parliament will be found a petition of the inhabitants of Berkshire to Edward the Second, to remove the county prison from his place of residence, and among other reasons given is the following:—that "the commonalty of Windsor is so weak, that the gaol cannot be sustained by the alms of the town, whereby the prisoners die immediately, as well the innocent as the guilty, and those who have goods die before judgment is given, so that the King loses the goods and chattels of the felon, to the great damage of the crown." Nor was any efficient legislative provision made for supplying the inmates of gaols with food until the reign of Charles the Second, when the Act framed with that intent contained in its preamble a declaration that "poor and needy persons committed to the common gaol did many times perish before their trial."

But to mortality from starvation must be added probably a greater carnage from the noisome state of the dungeons into which the accused were thrust with remorseless cruelty. Space does not permit me to furnish adequate materials for estimating the extent of these ravages; but we have all read of the "Black Assize" at Oxford, in 1577, when the appalling scourge of gaol fever, which infested our prisons and the courts into which prisoners came for trial, was fatal to one of the Judges, the High Sheriff, and many other persons. This disgraceful state of our prisons continued for two centuries longer. At one Sessions at the Old Bailey, the disease killed the Lord Mayor, two Judges, an Alderman, and several officers of the Court; and some faint idea may be gained of the dismay it inspired from the fact that at Exeter, so late as 1775, the gaol Surgeon was, by contract, excused from attending prisoners sick of this dreadful malady. Thus history shows how scant was the sympathy for the captive among our ancestors, as compared with that prevailing (perhaps in a somewhat morbid form) at the present day; and it proves how little cause of apprehension the authorities must have had lest sanguinary laws should be practically annulled by the reluctance of prosecutors. witnesses, juries, and judges to enforce them.—*Letter of M. D. Hill, Esq., Q. C., Recorder of Birmingham, &c. &c.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

ing such captivity by the inculcation of habits of cleanliness, order, obedience, self-denial, and industry appears in those days never to have entered into the philosophy of the punishing power. All such attempts would have been looked upon as concessions weakening to the force of terror, the one recognized specific, after the gallows, for crime repression, and which was considerably strengthened by the fearful scourge of gaol fever, falling alike upon the guilty and the innocent. To complete the sickening cycle of cruelty, it is only necessary to add that Englishmen have been sold as slaves, being carried to the West Indies for that purpose, and their price granted as the perquisites of court favourites.*

Marvellous as is the contrast between the measure of penalty, and the actual secondary punishments of the last and present century, it would have been little to our credit if we had not, blushing at our past inhumanity, inaugurated that extreme system of caution, by which the health and well-being of every criminal person is now protected. The exceptional cruelties in the Birmingham Gaol are the last proof that has been afforded of how jealously the oppression of the prisoner, and the infliction on him of the least unauthorised penalties are watched by the state, and how utterly repulsive they have become to public feeling At length—and long indeed was the time—when the dictates of common sense and humanity were heard, and the impulses of christian hearts were stirred on behalf of those "prisoners and captives" for whom former generations of Churchmen would appear almost mockingly to have besought the throne of mercy, there arose that danger which is now said to be paramount, namely, that feeling for the criminal should outstep its proper bounds, and that he should become an object of sympathy to a greater extent than the struggling and honest poor. A world in which injuries should go unpunished would be far from a desirable place of abode; but it was perhaps only natural that there should be a tendency to veer to the farthest extreme to that from which we had so recently emerged. We have been perhaps timid of laying

* 840 persons were sentenced by Judge Jefferies at the Bloody Assizes of 1685, who were so treated. Lord Macaulay says that they were embarked in small vessels similar to slavers of the present day, and that the dungeons in which they were confined were "all darkness, stench, lamentation, disease and death;" and it is added "that those who reached their house of bondage were mere skeletons, requiring to be fattened before they were sold."

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

down fixed principles, where we formerly have blindly followed custom, without imagining that duty or principle were involved. It is thus that the savage symmetry of our past penal code—if there can be harmony in such consistency—has never been replaced by an intelligible or consistent system; and we are as far from a proper classification of crimes, and criminals, as we are altogether at sea with reference to the actual object of punishment. Having been content to leave the solution of such important questions to general results, we were satisfied as long as crime apparently preserved a steady ebb, without enquiring how far increased national prosperity or other exceptional causes contributed to the main result, but the very sudden turn of its tide* no longer admits of its real causes and treatment being evaded or ignored.

It is related of the Saxon Primate, St. Dunstan, that one day when he had under safe custody three convicted coiners of false money, he asked the people whether justice should not be done upon them. They answered that the day, being a festival, and the prelate being about to say mass, it might be better to defer justice to some other day. The Archbishop is stated to have declined their counsel, and to have said, weeping with emotion, "I will not approach the altar until these men have suffered the penalty of the laws. I have a duty to fulfil to the widow, the orphan, and the humble, whom these have wronged; nor by false charity must I suspend their chastisement, and so encourage others to crime." But, it is added, "so soon as justice had been wrought upon the culprits, then did the prelate wash his face, and with a more cheerful step, ascend the altar."

Overlooking the saintly idiosyncrasy which, in an age, accustomed to the shedding of human blood, could consider a treble execution a seemly preparation for the celebration of the atoning sacrifice, this story brings forcibly before us that there are two sides to the charity of punishment, and a duty to the injured, or to society in its corporate capacity, as well as obligations to the wrong-doer.

* Under the head of Criminal Proceedings, the "Judicial Statistics" annually published by the Home Office shew a gradual diminution from a total of 23,047 sentences in 1854, to 12,066 in 1860; but they have subsequently risen to 15,312 in 1862, and the heavier sentences of Transportation and Penal Servitude have advanced from 2170 in 1859, to 3196 in 1862.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Society is now demanding a more uniform consideration of "the widow, the orphan, and the humble," and an abandonment of that false charity or mawkish sentimentality which renders a convict's style of living the envy of the honest pauper, and converts great criminals into objects of too compassionate interest.

It is impossible to shrink, in the face of past experience, from the acknowledgment that the vitiated moral sense of many of our fellow beings, whether arising from their neglected, or ill, training, or from defective conformation, almost necessitates their permanent withdrawal from the body of mankind, as much for society's sake as a saving measure against their entire deficiency in the powers of self-government, as on account of their actual past misdeeds. To give freedom to the habitually and incurably criminal is as dangerous to life and property as the letting loose an asylum of madmen; and it would appear as much a duty to ascertain cases of such proved moral incapacity to act as free agents, as to discover instances of aberration by the tests of psychological science. But to prove such individuals, it is necessary that they should have been often in the hands of justice, and that all the circumstances of their conduct should be very carefully reviewed. Although, therefore, in ordinary cases and first offences, the scale of punishment can only be apportioned to the actual offences committed, a further scale and classification is essential in respect of those habitual offenders upon whom all the appliances of corrective discipline have been in vain tried over and over again, but who as constantly return to crime like the dog to his vomit. Yet it is only lately that it has begun to be understood that a plan of cumulative punishment for old offenders is necessary in any systematic scheme of crime repression.

It must moreover be remembered that the force of punishment, whether in its simply punitive aspect, or as a partly deterrent and partly reformatory lesson, must differ with the circumstances of each case, and the constitution and previous habits of each individual. To the very poor, a prison will perhaps always remain, at certain times associated with more of the essential requisites of existence than their own miserable homes, or vagrant and dependent life; while the effects of hard labour, and separate confinement, will vary with the muscular developement, and nervous system of each prisoner. The shame, sensitiveness, and powers of endurance of crimi-

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

nals differing so widely, it follows that the adjustment of corrective infliction to crime must be reckoned on an average computation, and so fixed as to admit of a considerable margin; and it will even then still be liable to misconstruction from extreme points of view.

The Lord Chief Justice Cockburn, in his clear and powerful separate memorandum as one of the Royal Commissioners, says,

"Punishment should be as rigorous as is compatible with a due regard to humanity, and consistent with the health of body and mind of those subjected to it."

and he further remarks,

"The experience of mankind has shewn that though crime will always exist to a certain extent, it may be kept within bounds by the example of punishment. This result it is the business of the lawgiver to accomplish by annexing to each offence the degree of punishment calculated to repress it."

It is, however, obvious, that this "degree of punishment" must be also be regulated and limited by another important consideration—namely, that you cannot exhaust major punishments upon minor offences, or there otherwise remain no fitting degrees of punishments to assign to the more serious. The severest penalties might *effectually* in some cases be used to repress most insignificant offences, but public feeling revolts at disproportionate inflictions. The extinction of crime being the end both in the case of the culprit and those whom it deters therefrom, the use of punishment is clearly limited by a sense of justice and proportion. Were it otherwise, we might go back to the theory of Draco, and the practice of our forefathers, and, treating the minor criminal for his possible future nocuousness,

"Think him as a serpent's egg,
Which hatched, would, as his kind, grow mischievous
And kill him in the shell."

This influence of public opinion is distinctly alluded to by the Chief Justice, who says,

"As regards the increased leniency in the sentences now pronounced on old offenders, it is to be observed, that the spirit in which the law is now administered is not the growth of yesterday. It has arisen gradually out of the more humane and merciful dispositions of men's minds in modern times, whereby punishments inflicted without scruple in former days would now be deemed cruel and inhuman."

This clement spirit, however, seems to have got into a wrong

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

groove, and to be working a systematic evil which it is now necessary firmly, but upon principle, to check. We must retrace some few of our steps which have been taken with too little thought of their consequences; but we are perhaps in danger of also being induced to go backwards in others wherein our progress has been sound, and in accordance with the plainest principles of Christian justice. The leniency of sentences has thus apparently reached a limit from which it is necessary to recede; experience also proving that the insufficiency of our present system is in part attributable to punishments, in themselves too moderate, being too leniently carried out. The higher secondary punishments in many cases prove rather to be a temporary retreat of great culprits from society than appreciable measures of active correction; while in minor sentences of prison detention the extreme diversity of systems legally prevailing embraces almost any degree of extreme rigour, or of inconsistent indulgence.

Before going into the question of the mode of carrying out sentences, involving several of the most important and disputed points of prison discipline, it is necessary to advert to two branches of the prevailing tendency of Judicial sentences which are specially commented on by the Royal Commissioners. They say in the 36th paragraph of their Report:—

"Many old offenders are brought to trial without being recognised as such, and more effectual means should be adopted for ascertaining any previous convictions incurred by a prisoner, and bringing them under the consideration of the Court before which he may be tried for a fresh offence. We consider it to be beyond our province to enter into the enquiry, as to how this object might be accomplished; but we have no hesitation in saying that it is one to which the attention of the government should be directed."

And again in the 37th paragraph—

"The great latitude allowed by law in the sentences which may be pronounced, has led to a striking inequality in the punishments inflicted by different judges for the same offences. committed under similar circumstances. This inequality is a natural consequence of the dissimilar views of which various minds, acting independently, must inevitably take of the degree of severity properly applicable to the cases that arise. It is nevertheless productive of much mischief, especially by encouraging criminals to speculate on the chance of receiving, if convicted, the minimum of punishment ever known to be inflicted."

It it thus that the criminal class has of late years been generally luxuriating in the treble immunity of freedom from indentification

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

as old offenders, and of the mildest administration of the lightest possible sentences.

Although upon the plan on which the Judicial Statistics are arranged, it cannot exactly be ascertained from them what are the proportions in which the convicted offenders in any year have been previously convicted, it is possible from the returns in reference to commitments to arrive at some approximate calculation. It appears then that in the year 1862, the total commitments to the various prisons in the Kingdom amounted to 141,742; of that number 44,877 were known to have been committed to prison once previously; 26,090 at least twice; 13,036 at least four times; and 4,048 above ten times. Of these numbers committed—the larger proportion of them summarily—it would be a very liberal estimate to reckon ten per cent. as acquitted or discharged; for innocence would be the least likely to be found among those who had the most frequently seen the inside of prison walls. On turning to the sentences however, it will be found that only 4,266 punishments exceeding one year's imprisonment were given throughout the Kingdom during the year, of which it is again probable that not above ten or fifteen per cent. of the recipients were among the above ten times committed. There were moreover in the same year 10,059 sentences passed exceeding three months and including a year, but there were 8,983 persons who had been previously committed from four to ten times. The total of sentences over one month was 35,539—including 13,874 awarded at Assizes and Sessions, and 21,665 by the summary jurisdiction of Magistrates—but there were 44,877 persons who had been previously committed from once to above ten times. Supposing then that a fair share of the prison novices, numbering 96,865, received sentences at all adequate to the offences which even first offenders commit, there must be no inconsiderable proportion of old offenders whose antecedents went for nothing in the augmentation of their punishments. There were in the same year 46,894 cases of larceny alone disposed of before Justices of the Peace. It is no unfair inference from these statistics to say that the prevailing treatment of offenders too generally ignores their criminal antecedents, and that the whole scale of awards for evil doing has been permitted to drop to too low a scale.

Irrespective however of sentences, a principal cause of immunity

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

is to be found in what the Committee of the House of Lords terms the "inequality, uncertainty, and inefficiency" of the several punishments themselves. In no two places does six months or a year's imprisonment mean the same thing; each term of punishment, to know its true signification, requiring to be translated locally, while in addition to an absence of uniformity in prison construction, and in the labour, diet, and treatment of the inmates, there is a total want of unison between imprisonment and penal servitude as forms of punishment. In the mode of confinement, and by reason of the differences in diet, labour, and gratuities, punishments of eighteen months, or two years, in county gaols have come to be infinitely heavier inflictions than the three or four years' sentences to convict prisons. Upon this branch of the subject the Lord Chief Justice says:—

"And here it may be permitted incidentally to remark that it is most desirable, not only that the two forms of punishment, imprisonment and penal servitude should thus be brought into unison, but also that greater uniformity should be introduced in the discipline of our various prisons. It is well known that the discipline of different gaols varies materially. In some severity is carried to the extreme of rigour; in others the excess is in the opposite tendency. The same sentence which carried out in one prison would be a severe one, might be inadequate to the gravity of the offence if suffered in another. It is obvious that one uniform system should be universally established, so that the inequality of punishments, which must otherwise exist, may thereby be prevented."

This necessary harmony of our system of punishment would however appear not very likely to be arrived at by the reference of the two distinct subjects of gaol and convict prison discipline to two separate examining and consultative bodies; and it is certainly much to be regretted that instead of one half the subject being presented to a Royal Commission, and the other handled by a Committee of the House of Peers, the question of punishment *in all its branches* had not been given over to the deliberations of one competent Commission. To reconcile somewhat conflicting views, and to dovetail the conclusions of these two Reports of the Royal Commission and Lords' Committee may now be a matter of some difficulty. It is impossible, however, that we can continue so inconsistent a national system of punishment; and its conspicuous discrepancies and anomalies must in some manner be pruned and adjusted. If the ex-

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

tremely mild views as to labour and diet advocated for convicts by the Royal Commissioners are to be adopted, the resolutions of the Lords' Committee must be modified when carried out into practice; or if on the other hand punishment is to be made as formidably deterrent as their Lordships suggest upon small offenders, it will be necessary that the larger culprits should in due proportion be compelled to taste of the same bitter waters. Within certain limits there undeniably exists this essential difference between long and short periods of punishment, that to the former can be added every possible appliance likely to conduce to a reformatory effect, while in the case of very short sentences any abiding influence for good—whatever may be the other purposes of such inflictions—can scarcely be expected. Whether, however, because such sentences are not long enough for the eradication of much evil, or the acquirement of good habits, it is lawful or consistent to import into them the greatest possible deterring force is a very serious question. The retributive justice of a Christian state whose proper and legitimate purpose in punishment is not to avenge crime, but to prevent it, if it cannot actually hope to accomplish permanent reformation by short sentences, can at all events give to them a reformatory and useful tendency; while to short as well as long sentences must be applied those restrictions which public feeling enjoins. In place of a mode of punishing which has been reckless and unsystematic, we require one, the parts of which shall be in unison, and founded as far as possible on a natural instead of an artificial system of discipline.

For the furtherance of such a scheme I propose now to review some of the points upon which the labours of the Royal Commissioners and the Committee of the House of Lords have been bestowed, pointing out as I proceed some matters in which comprehensive changes hitherto unrecommended may with advantage be adopted.

I shall enter first upon the consideration of the very important question of prisoners' food. Whether dietary in prisons should form an element of punishment is a point upon which great diversity of opinion prevails, although as a fact it is undeniable that the various scales of convict prison and gaol diet are made available both for reward and punishment. Not only is bread and water in solitary confinement the very sheet anchor of punitive infliction for breaches of discipline committed when in custody, but it is also customary in

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

many gaols to treat the shortest sentenced prisoners for periods not exceeding ten days to the same scanty fare; while on the other hand the beer, cheese, puddings, and treacle, which form part of the advanced convicts' allowances are avowedly allotted as rewards for industry and quiet demeanour. While the labour and diet of those legally deprived of liberty for their crimes appear thus to be inseparably connected, the opinion of the thinking part of the community as closely associates the exclusion of all indulgencies of appetite with *any* criminal punishments deserving of the name. To pamper convicts habitually with sweets and stimulants not essential to health, while the law retains possession of their bodies for the satisfaction of the terms of suffering due to their offences, appears rather as if the governing power were undecided whether crime should be punished or rewarded; and so committed itself to an attempt to

> "Keep the word of promise to our ear,
> And break it to our hope."

There is a sense of fitness in things which forbids the bread of affliction being too much sweetened, or the water of affliction having an alcoholic infusion.

The Lords' Committee in reference to the dietary of gaols say, "the discrepancies as regards amount and quality" are remarkable; the element of bread varying from 30 oz. per week to 224 oz.; potatoes from 24 to 112 oz.; and meat from 0 to 25 oz. By a tabular statement laid before the Committee, of the highest dietary in fifty county gaols, it appears that the average quantity of solid food per week amounts to 267 oz., and of liquid food to 17 pints. The various quantities of solid food extend from 160 oz. in Northumberland, to 333 oz. at Huntingdon; and the liquid food from 8¾ pints per week in Westmoreland, to 38½ pints—an excess of liquid which must be marvellously injurious to the stomachs of the inmates—at Pembroke Gaol. These, however, are on the highest scale; while the lowest goes down, their lordships say, to 100 oz. per week. If hard labour is to be enforced, these various scales perhaps generally require improvement rather than diminution, and it is obvious that the Home Office must lay down a general scale, which should be rendered equally compulsory upon all. The scale issued by the Home Office in 1843 has been wholly adopted by some gaols, partially by others, and not cared about at all by many.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Upon this question, the great difficulty appears to be, to bring the diet of the Convict Prisons into a commensurate scale, after fixing upon a fair gradation for gaols. The sentences of two or three years imprisonment in gaols, of which many have been passed within the last few years, are in this matter alone—irrespective of the long continued separate confinement,—incalculably severer that the lowest sentences, either three or four years, of Penal Servitude; the average of the solid food being as stated above 267 oz. in gaols, and the lowest scale in separate convict prisons being 325 oz. weekly; while the highest at Portland is 403 oz.

The Royal Commissioners in the 50th paragraph of their Report shew a great disinclination to interfere on this particular subject, and as mine happens to be the only decided opinion in favour of reduction of diet given before them by one who has had experience as a discipline officer of the prison service—although it is, I am happy to say, borne out by the very high authority of Dr. Guy, the Medical Superintendent of Millbank—I wish to allude to it in some detail, considering that the interests of the convicts—regarding punishment as a state of discipline—and of public economy are very considerably involved. I will therefore first quote the decision of the Royal Commissioners in full. They say:—

"An opinion has been expressed by some of the witnesses we have examined that the present scale of diet in the public works prisons is excessive, and from an elaborate comparison between the diet of Convicts in the Convict Prisons in England and that of Paupers in workhouses, and of free labourers in the same country, furnished to us by a gentleman of the Poor Law Department, it certainly appears that the former are much better fed than either of the two latter classes. On the other hand Mr. Evans, who has had great opportunities of observing free labourers engaged in works of the same nature as those which are carried on at the public works prisons, has stated that the food consumed by them is superior both in quantity and in quality to that given to convicts, and that he did not think the diet of the latter better than is necessary, considering the labour exacted from them. It has been shown also, that the present dietary has been arrived at by degrees, such changes as were suggested by experience, having been from time to time made on good medical advice. Under these circumstances we are not prepared to recommend positively that the rations of these prisoners should be diminished, but we think it desirable that experiments should be tried, in order to ascertain whether any reduction can safely be made."

When Sir Joshua Jebb was asked by Lord Cranworth whether this high scale of diet had any practical deterring effect he replied:—

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

"Probably not. Convicts and the criminal population are aware that they are considerately treated and they must be. There are only two ways of dealing with men—either to drive or to lead them. If you drive them the public suffer from the effects of the demoralization, and if you lead them they gain by a large proportion being reformed."

The inconsistency of this sugar plum system of discipline is obvious; and to talk of reformation in connection with a scheme which demands gradually increasing sops is little better than farcical. The "demoralization" is evidently produced not by the withholding, but by the free grant of unnecessary indulgences, for obedience and submission are here plainly acknowledged not to be voluntary, or the force of habit acquired with difficulty; but purchased on the scale which demands a gradual increase in quality and quantity from the 325 oz. of plainer food at Pentonville to the 403 oz. with its puddings and varieties at Portland and Portsmouth. What Sir Joshua Jebb in his kindness of heart called "driving" would rather appear to be the essence of convict discipline and control, a sense impressed upon them that, although not to be treated with unnecessary cruelty, all obligations are to be fulfilled by them for their own sake, and without reward, so that they possess no claim to anything save what the State may graciously extend to them for works of undeniable supererogation. In the year 1851, when Portland Prison was under the able government of Captain Knight, he reported that the estimated earnings of the prisoners amounted to £3800 in excess of the expenses of the establishment, and he says of the prisoners, "their manner is at all times equally removed from dejection and sullenness, or that daring though suppressed recklessness which is sometimes to be observed in convicts." They had at that time none of the dietary indulgences afterwards superadded, and their victualling cost about £7 10s per man; in 1862 it cost £12 6s 7d per man. In the Report of the Directors of Convict Prisons on the Hulks for the same year (1851) where the cost of the prisoners' food was nearly the same, they say :—

"The records of the conduct and industry of the prisoners by which the period of their detention under penal discipline is regulated, and there being placed to their credit a small gratuity weekly, for their future benefit, have been found to be a sufficient inducement to industry, *without having recourse to the stimulants of beer, tobacco, and extra food, by which in former times the convicts were excited to exertion.*"

This shews that even the inferior discipline of the Hulks was pro-

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

ductive of effects which appear to be unattainable in the present day, without a deal of extra concession and pampering. There is a somewhat curious admission made by the Secretary of State in a letter approving of the increase of dietary in 1850, where he says, in reference to the convicts' diet "they should not be *in a better position in this respect than ordinary free labourers*," for society at large is certainly impressed with the opinion that their position should be considerably worse by reason of their criminal culpability. If no sufficient distinctness is made between the dietary of the most wantonly wicked of mankind, whilst undergoing the allotted penalties of their offences, and the honest labourer, the deterrent element of punishment has certainly reached its vanishing point.

But the opinion of Dr. Guy—if the amount of diet in prisons as Sir Joshua Jebb said "is altogether a medical question"—should be allowed its full weight. He was asked by Mr. Waddington before the Royal Commissioners the following question:—

"What is your opinion as to the diet of Portland where the men perform the hardest work, is it excessive or not? *I should consider the diet decidedly excessive for any amount of work that could be got out of prisoners by any contrivance you could adopt.*"

The admirable and explicit letter of Mr. Harries, of the Poor Law Board, proves also by the clearest details how excessive are the convicts' allowances of rations. He shows that the soldier only gets 337 oz., and the sailor 329 oz., to the Portland convict's 403 oz., and that the labouring classes in the several counties get infinitely less. In point of cost he shews that the victualling of the convict begins in the separate prison at 3s. 6d. per week and rises to 4s. 3¼d on the public works, while the able bodied pauper is provided with food at an average cost of 2s. 3¾d., and that the convict gets "58·4 per cent. more food than the convict of 30 years ago, 3·7 more than the lunatic; 11·9 more than the soldier and working coachmaker respectively; 14·5 more than the sailor in the navy; 53·7 more than the compositor; 54·7 more than the pauper; and 21·9 per cent. more than the average of the lunatic, soldier, working coachmaker, sailor, compositor, and pauper."*

* I cannot resist quoting in full Mr. Harries' unanswerable conclusions in reference to the "revision of dietaries." He says, "Considering all the circumstances of the case, and bearing in mind both the interests of the public

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

The question then which must now be brought before the legislature is fairly reduced to this :—supposing a convict to perform an equal amount of daily labour with the non-criminal portion of the community, whose callings and trades are enumerated by Mr. Harries, are there any special reasons which demand, for the ordinary preservation of his bodily health, that he should be supplied with food so far exceeding theirs in quantity. If there are any special considerations in the convict's case, in what do they consist? for they should be very plain and self evident to justify an apparent premium of food in the case of the dishonest over the honest; while it is even questionable whether a certain amount of reduction of exuberant health by fair labour—not amounting to actual loss of health—is

and that of the convict, I am inclined to think that they ought to be altered, and for the following reasons :—

1. Because the labour of the convict is not greater than that performed by the agricultural labourer, and hardly in excess of that required of the able bodied man in the workhouse.

2. Because the diet of the convict is much in excess of the several classes mentioned.

3. Because the convict is placed, in regard to food, in a better position than it is possible for the honest labourer to attain.

4. Because it is a temptation to crime. For instance, suppose J— H— one of the cases of the agricultural labourers noticed, was sent to Portland, there he would obtain food of different sorts amounting to 377 oz. a week, and at a cost of 4s. 1d. At the expiration of the term of his imprisonment he returns home probably improved in health, and possibly with an enlarged appetite ; he obtains employment at his former wages of 8s. a week ; he however soon finds it out that he cannot do now as he did formerly, and that after providing for his wife and four children he cannot possibly get anything like the amount of food he had in prison. He might say "I work hard, and have not enough to eat, and when in prison I did not work harder where I had plenty to eat, and therefore it is better for me to be in prison again than here." He therefore commits a fresh crime and leaves his family to the care of the Parish.

5. Because it is unjust to the convict whose physical condition has been raised above its usual level, and hence he is placed on his release from prison if unreformed, in a better position to commit crime again.

6. Because the cost of the diet is greatly above that of the pauper, the lunatic, and the agricultural labourer.

7. Because of the expense—it being unjust to the public to have to pay 4s. a week for the food of the convict, while the poor lunatic and pauper can be properly maintained at an average cost of only 2s. 4d."

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

not a proper constituent element of punishment. If diet in prisons be "altogether a medical matter" it should be fixed by a Board of thoroughly competent and totally uninfluenced professional men, and then we should not have the varieties which even exist between the three Public Works Convict Prisons. I say it with no disrespect of the medical officers to the service, but my opinion is that they should have nothing to do with fixing the scale; and I think it would be right that instead of the prisoners looking to the doctors as the sole arbiters of their fate in the matter of puddings and varieties, when they are in ordinary health, that the odium attaching to this responsibility should be taken off their shoulders, the convicts being clearly given to understand that their dietary, as fixed in ordinary health, is also, to a great extent, a question of discipline. The position of medical officer over convicts is not at all an enviable one; and it requires strongly to be upheld and shielded by the discipline authorities of a prison, while it is, under all the circumstances, I think, a mistaken policy that the ordinary diet allowances should be ever allowed to rest upon the unsupported recommendation of the Surgeon of the Prison. The gradual increase of the quantity of the convicts' food has evidently arisen out of this. The Surgeon has enough to do to guard the door of his infirmary against malingerers; and to do this effectually requires great firmness and determination. There is no officer—not excepting the Governor, who exercises the power of punishment—who runs greater personal risks. The wrongs of their position are in his case individualized, and every ill-conditioned, half-crazy, or scheming convict feels the power of his functions, and makes him thoroughly understand that he knows it. The case of poor Mr. Hope, the Surgeon of the Stirling Castle Hulk, murdered by a miscreant, afterwards most deservedly hanged, and who, I believe, fell a martyr to the cause of sensible resistance to an extensive pudding and what is called "hospital comfort" struggle, proves the serious nature of these duties; and it has been a strong case in the convict mind ever since. Before going out to the works in the morning, every convict has a right to see the doctor, a necessary precaution as to their health, which is very freely both used and abused. In the Report of the medical officer of Chatham Prison for 1860, he gives the average daily number of complaining sick in a population of 1064



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

as 99, exclusive of 24 patients in the infirmary, and two admitted daily.

It has undoubtedly been urged on high medical testimony, that during separate confinement for any lengthened period, injurious consequences to body and mind can only be averted by maintaining to a certain extent a liberal dietary; but it then becomes worthy of consideration whether this kind of punishment for a continuance is not too dearly purchased, and whether more compulsory labour, with less seclusion would not be a desirable substitute for it; while this argument has evidently no weight whatever when the convict is transferred, after his nine months seclusion within the four walls of his narrow cell to the comparatively exhilarating influences of companionship and open air exercise, and labour at Portland, Portsmouth, or Chatham.

But I come now to the very important element in the decision of this subject—What is the amount of work which convicts actually perform, which is considered to entitle them to these excessive allowances of food? In the first place, is their rate of working, with all the stimulants of gratuities, &c., at all equal to that of the free labourer? The Royal Commissioners have apparently not gone very deeply into this question, but the Lord Chief Justice, referring, I presume, both to the duration and severity of convict labour, says,

> "In this country the amount of labour required from a convict under penal servitude is about one half of what would be done by an ordinary day labourer."

Various engineer officers, under whom convicts have worked, concur in estimating their labour at considerably less than that of other kinds of workmen. Captain Tilly, R.E., who remarks that in spite of any amount of inducement, "convict labour still remains forced," says that its value is about a fourth of that of a navvy, and less than half that of a sapper; and it would perhaps be no unfair estimate to fix the force and energy of average convict labour at a good third less than that of an ordinary free workman. I have seen exceptional convicts work as hard, and apparently as willingly as free men; but a certain "Government stroke" pervades the majority, and where special reward for "piece work" is not given, it is almost impossible it should be otherwise.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Without entering into the question of the pecuniary valuation of convict labour, the future correct estimate of which will be secured by the practical method of dealing with convict works which I, on a former occasion, publicly suggested, and which has received the approval of the Royal Commission,* I may mention that the expressed opinions both of Mr. Coode, the Superintending Admiralty Engineer of the Portland Breakwater, and of Mr. James Macdonnel, Superintending Admiralty Engineer of the Chatham Dockyard Extension,

* The Commissioners say, in the 59th paragraph of their Report, referring to this suggestion, "Some difficulties have arisen, both in this country and in Western Australia, from a division of authority between the officers of the Convict Department and the officers of other departments of the government for which works have been carried on by convict labour. To obviate the recurrence of such inconvenience, the principle should be laid down that the Convict Department, in the execution of public works, should stand to other departments of the government precisely in the position of contractors. The Admiralty, or other department for which work is to be executed, should give precise instructions and specifications with respect to it to the directors of Convict Prisons, and the latter should have power, without being in any manner interfered with, to carry on the work in the manner they might judge best for the discipline of the convicts. The value of labour performed by convicts for other departments ought to be ascertained as nearly as possible, as if it had been performed by contractors, and should be charged for accordingly."

In 1861, upon the same subject, I wrote as follows: "The difficulty in this case is, however, I am convinced, not an evil without a remedy; and it is a very simple, plain, and effectual one. Let the Convict Service be looked upon and in every respect treated in the light of contractors by the Admiralty and War Departments. A certain work has to be done; let the plans of it be given over to an Engineer appointed by the convict department, upon whom let the whole application of the labour rest. Let a fair estimate be agreed upon between the two departments, the necessary plant be provided by the convict service, the work be surveyed as often as is needful by the engineers of the department for which it is being executed, and a transfer be made of a stipulated sum from the accounts of one department to the other as progress is made. There will not then be two sets of officers, one to control the convicts, the other to employ them, both with their excuses against the hindrances of the other, and neither sufficiently interested in the progress of the work. The credit of the Convict Service alone will be at stake and a proper stimulus will be carried downwards to the prisoners themselves."—*Letter to Sir G. C. Lewis, Secretary of State for the Home Department.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

who have both had abundant opportunities of ascertaining the relative value which convict labour bears to free labour, afford strong additional testimony to the inferiority of the former; while even Mr. John Evans, who was sent down to visit the Public Works Prisons, and to report to the Commission, and whose testimony is on the whole favourable to the convict service, remarks as to the stone work,—

"I should say that two prisoners would do the work of one free quarryman, and we must bear in mind that it is forced labour, and not given willingly." And of bricklaying by convicts,—"You cannot expect to get the same amount of work out of them that you would out of an ordinary bricklayer."

The Commissioners upon this point say,

"We have thought it advisable to make a special enquiry as to the degree in which the convicts are made to exert themselves, and also as to the value of their labour, and the judgment with which it is applied. Though discipline, and the maintaining the penal character of the labour ought to be the first objects, it is of great importance, also, to obtain as large a return from it as possible; and this not merely from financial considerations, but on account of the moral advantage which results from employing the men on work they know to be useful. Convicts naturally show much greater industry, and exert themselves more cheerfully when they feel that their labour is really valuable, than when it appears to them to be wasted or misapplied; and in useful work, they require a training which is most valuable to them after their discharge."

And, alluding to Mr. Evans' evidence, they further say,

"He stated to us that, in his opinion, two convicts employed in quarrying at Portland, or in making excavations at Chatham, did the work of one free labourer; and this difference, great as it is, does not appear to be more than is accounted for by the previous training of the latter, and the different circumstances under which he works."

The general conclusion, then, is obvious, that in spite of the stimulants of dietary, of liberal gratuities, and of a scale of commutation of sentences, all given as incentives to "willing industry," average convict labour remains, under the best circumstances, far inferior in energy and vigour to free labour, and that so much less of it is performed within a given time.

I wish now briefly to enquire into the amount of the severest convict labour in reference to its average daily duration. Such various statements have been made upon this subject, that it is necessary to

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

go to the most correct sources of information; and I therefore propose to examine the statistics afforded by the last Annual Report of the Directors of Convict Prisons.* As it is professed that the dietary is rendered necessary by the severe exertions of the convicts on the Public Works, I shall leave out of the case the lighter and unproductive labour which also occurs in each prison.

As regards the stated hours of labour in the daily distribution of time, I find that at Portland they are only given at their maximum. They are from 6-50 a.m. to 12 noon, and from 1 p.m. to 6-10, which gives, under the head of out-door labour, ten hours and twenty minutes; but it is explained that "about one hour each day of this time is consumed in parading, and going to and from the working grounds at a distance.

At Chatham, the stated hours of labour are from 6-45 a.m. to 12-15 p.m., and from 1-15 to 6-10, giving 10 hours and 25 minutes, but an hour and 20 minutes is stated to be consumed out of it in a similar manner. These are the hours on the *longest* day, but at Portsmouth, both the hours on the longest and shortest days are given. They shew the labour to extend from 7-10 a.m. to 12, and from 1-10 to 6 p.m. in summer, and from 7-30 to 12, and from 1-10 to 4 p.m. in winter; being, in the former case nine hours and forty minutes, and in the latter seven hours and twenty minutes, including mustering and going to and from work, for which no fixed time is assigned.

Now referring to the abstracts of the labour of the convicts in all these prisons, I find that at Portland an average of 1063 prisoners worked daily throughout the year for the Admiralty and War Department at the Breakwater and Fortifications, and that they are stated to have actually worked 2,468,319 hours, giving an average daily period of labour for each, exclusive of Sundays, Christmas Day and Good Friday, of *seven hours and twenty-seven minutes.*

At Portsmouth, the public works labour was performed by an average of 497½ convicts, who were occupied 1,384,760 hours, giving a daily average of *eight hours and fifty minutes;* and at Chatham an average of 753 convicts worked for the Admiralty, War Depart-

* See Report of the Directors of Convict Prisons for the year 1862, pages 138, 171, and 239.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

ment, and Engineers, and in the Brickfield, 1,961,676 hours, giving an average daily labour of *eight hours and twenty minutes.*

The actual average of the three prisons therefore, gives just eight hours and thirteen minutes; or, deducting the time spent in mustering, and going from the parade ground to the works and back, a daily average for each convict throughout the year of *seven hours actual labour* on the works. Be it remembered too, that this is not supplemented *by any kind of work within the prison walls.* The construction of these places renders that almost impossible, for even on a wet day when the convicts are kept altogether from the works, it is a matter of no little difficulty to find anything for them to do, and a nominal task of oakum picking is about all that can ever be attained in the way of indoor occupation. If longer hours of labour on the works are unattainable; and the exigencies of discipline or safe custody demand—as they undoubtedly in many cases do,—that the convicts should at times be brought back into the prison, it would seem essential that, in reference to these occasions—irrespective of the wasted evening hours throughout the year—there should be such a constructional arrangement of a labour prison, that it might be possible to employ the prisoners within its walls at some really useful employment. As it is, however, when only a portion of the prisoners are at their out-door toil, others who are shoemakers, tailors, washermen, cleaners and bakers,* as well as those employed upon prison repairs, &c., in the workshops, are all withdrawn from the strength of the public works, and are kept in to do their respective kinds of industrial labour; whereas in very many cases, these employments, if the prisons were constructed for thoroughly practical uses with these objects in view, could be made supplemental to the average seven hours labour on the works, thus largely increasing

* It would be absurd to say that at least the employments of baker, bookbinder, clerk, cleaner, pumper, shoemaker, tailor, and washer, could not be equally well carried on after 6 p.m. in summer, and 4 in winter. Yet I find 70 so occupied permanently throughout the year at Portsmouth, 75 as bakers, shoemakers, tailors, and washers at Portland, irrespective of 37 on an average at general prison labour, and 57 at these employments at Chatham, in addition to 67 at general prison labour. There is therefore here a mass of work which, in a prison properly constructed and lighted, can be used to supplement out-door labour, and giving permanently some hundreds of additional hands to the works.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

the productive strength of these establishments The loss which I pointed out in 1860 to Sir Joshua Jebb, by the daily abstraction of 300 men from the works on account of schools at a loss of about £9,000 a year* in estimated labour has been so far appreciated by the Commissioners, that they have recommended my proposal for giving all educational instruction in the evenings, stating that

"The practice of giving each convict half a day's schooling a week in the hours that would otherwise be devoted to labour is objectionable."

Viewing then the two questions of the diet and labour of convicts in their natural relation, it is impossible I think to ignore the startling disproportion between them, or to deny the absolute necessity both of a curtailment of the rations, and reasonable increase to the work. Universal testimony admits the inferior energy of all kinds of convict labour, yet the labour punishment of muscular offenders, specially fed to be capable of hard work, is limited to an average of *seven hours per diem* throughout the year, while the poor factory child is only protected in its honest industry by a law which forbids its working more than ten hours and a half. Is it consistent that the penal labour of murderers, garotters, burglars, or of any criminal who has deserved even the lowest sentence of the punishment next to death, should be one third less than the legally-restricted work of factory children of thirteen? King Alfred's division of the day into eight hours for work, eight for recreation, and eight for sleep has become parodied indeed if, in an age of such general human toil, the most undeserving of mankind, under the severest form of punishment the law inflicts are *alone* to be secured in an average of less than the Saxon King's allowance of toil, and more than his permitted share of sleep. Amid the ordinary workers in the hive of industry, whether by the side of roaring furnaces, or the rattle of machinery, where hill and valley teem with labour; or in rustic hamlets far removed from busy thoroughfares, honest occupation exacts permanently a far more vigorous, excessive, and engrossing service. Setting exceptional cases aside, where in certain trades the conflicting interests of masters and men lead to the positive sacrifice of health by occasional most excessive toil, or where women and children for a miserable pittance are constantly wearing out their wasted frames

* See "Minutes of Evidence," in Penal Servitude Acts Commission Report, page 441, question 5471.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

and strength in the dire struggle to maintain existence, it does seem wrong that our ordinary honest working population, whose average hours of daily toil are so very much more, should be placed in the false position of envying the man whose crimes against society demand that his daily bread should be doubly earned by the sweat of his brow. If honest industry can endure its daily privations, and the exigencies of the hard lot of so vast a portion of the lower classes compel satisfaction with so inadequate a replenishment of their exhausted bodies, it stands to reason that the penitent criminal should be disposed, and the impenitent criminal be compelled, at least to afford a considerably better return for their compulsory maintenance at the public expense than is now the case. There can be no inhumanity in the demand that the slave labour of criminals, in return for ample food, shall at least equal the average of free labour.

One of the greatest difficulties as to secondary punishments, to which the attention of the Royal Commissioners was specially directed, and upon which they arrived at certain resolutions, about to be embodied in law, consists in the question of the duration of convict sentences. There are first to be considered the set nominal terms of a whole scale of sentences of transportation or penal servitude; and, secondly, the important question has to be solved whether any, or what amount of abatement is to be made from each of them; in other words, what real punishment in point of time we are to understand by each nominal award. That the public mind should be in a state of considerable confusion on the subject cannot be wondered at when, in the course of about a dozen years we have had four distinct systems in operation, relating to the length, and remission of penal sentences. For clearness' sake I will briefly enumerate them, especially as such a review will facilitate the understanding of that whereby the Royal Commission proposes that they should be supplanted.

The first arose in the palmy days of transportation, when the necessities of many of our now thriving colonies compelled them, as the *West Australian Times* says, to "humble themselves, and eat dirt," and when there was a positive rivalry among them to become the receptacles of our criminal refuse.

The minimum sentence of transportation was then seven years, of which every convict had to pass one year in separate confinement.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

He was then removed to a hulk or prison for employment upon public works, where if his conduct proved exemplary, his detention was regulated by the following scale in proportion to his sentence:

| | | | | |
|---|---|---|---|---|
| For 7 years | he would be detained | not less than | 1 | year. |
| „ 10 | „ | „ | $1\frac{3}{4}$ | „ |
| „ 15 | „ | „ | 3 | „ |
| „ 20 | „ | „ | 4 | „ |
| „ Life | „ | „ | 5 | „ |

He would then be eligible for transportation; and, on his arrival in a colony, for immediate liberty on ticket of leave provided his service was taken up by some private employer; or if not, he would be employed by Government at wages out of which he received clothing and rations. His "ticket of leave" by continued good conduct became exchangeable for a "conditional pardon" in another year and a half if a seven years man; in two years if his sentence was ten years, and so on in proportion. The conditional pardon gave perfect liberty save in the event of returning to this country. An exemplary convict under this system out of a sentence of seven years obtained partial liberty at two years and a half, and his entire freedom in the colonies at four years. He was thus kept out of sight for the entire period of his sentence, and had the opportunity of beginning life anew where labour is highly prized, and where he might with no great effort become an honest member of a flourishing community. The total expense of his punishment involved a year's maintenance and custody in a separate prison, which then cost less than £25; and another year in a hulk, or public works prison, which had then only reached the cost of £23* in addition to the expenses of the voyage.

The change which followed this system was brought about by the determined refusal of our colonies any longer to take our convicts. Van Dieman's Land itself at length declined to remain a receptacle for the malefactors of the mother country; and we were eventually led to adopt a plan of early release at home, without the security of employment, and without the safeguard of supervision. The nominal seven years transport was thus placed in a position of greater freedom than the "conditional pardon" man in the colonies, having nothing but a series of conditions annexed to his ticket of leave which he well knew to be inoperative.

* See Report of the Directors of Convict Prisons for 1851.



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

The second phase in the length and remission of convict sentences exhibited therefore some thousands of criminals liberated on ticket of leave at home, after completing only between two and three years out of their sentences, and placed in the full possession of liberty; who, had they been sent to Van Dieman's Land or elsewhere, would have been placed under the surveillance of the police officers of their districts, and compelled always to be at their dwellings from ten at night till daybreak, until they had completed four years at least, and for the remaining portions of their sentences could not have appeared in this country at all. It was this which led to the ticket of leave panic of 1855.

But in the mean time a third change had been accomplished in all prospective sentences. By the same act of August 1853—popularly known as the Ticket of Leave Act—which gave power to the Government to liberate all those convicts at home on ticket of leave who could no longer be sent to the colonies, certain fixed sentences of penal servitude were substituted for all crimes previously visited by transportation. The act 16 and 17 Vict. c. 99 is consequently more correctly designated the first Penal Servitude Act of 1853. It made four years' penal servitude an equivalent for seven years' transportation, six of penal servitude for ten, and so on; but although power was taken to grant a certain remission of the penal servitude sentences it was never generally—in fact I believe I may say only in very rare and exceptional cases—acted upon. Whether this was or was not the intention of the legislature seems doubtful. The Government may have been unwilling to incur the odium of extending tickets of leave to prisoners under such short sentences; suffice it however that the terms of these punishments were for the first time literally and strictly adhered to, and four years was found by thousands to mean not a day less than it implied. It was complained that under the operation of this act, interpreted by the Government as one of fixed sentences, the cheerful and ready obedience of the convicts of former times yielded, as hope diminished, to a dogged and discontented submission to discipline; and that great difficulties arose from the irritated condition of feeling betrayed by those suffering from disappointment spreading to others who had no real grievances to complain of. There can be no doubt that there was some appearance of injustice, for the terms of the act obviously contemplated

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

mitigation, and many of the judges passed severer sentences than they would probably otherwise have done, in expectation of its being granted, ; while added to this, the four years was more than an equivalent for the average period undergone for many years by seven year transports. Its so long remaining an almost open question whether mitigation would be granted, and the prisoners being thrown together with men whose sentences and corresponding privileges widely differed from theirs, made the notion of the injustice rankle, until it at length broke out in the strike which occurred at Portland prison in September, 1858.

The fourth and most important change in the length and in reference to the remission of the higher class of sentences was made in 1857, partially on the recommendation of a Committee of the House of Commons, which sat in 1856 to enquire into the provisions and operation of the previous Penal Servitude Act, 16 and 17 Vic., cap. 99. It constituted Transportation and Penal Servitude convertible terms, and gave power for the first time to pass sentences of penal servitude of three years duration; but it somewhat inconsistently professed to *extend* "the terms of penal servitude, so as to make them correspond in duration with the terms of transportation to which convicts might formerly have been sentenced." In spite of the manifest intention of this law, and a circular memorandum from Sir George Grey, clearly explaining its purpose to the judges and magistracy, it has undoubtedly in practice had the mischievous effect of still further shortening sentences. It also re-introduced the principle of mitigation of sentences upon the recommendation of the House of Commons, that every punishment by penal servitude "should, besides a fixed period of imprisonment or hard labour on public works include a further period capable of being abridged by the good conduct of the convict himself." The period of this remission being left to the Home Secretary, a scale was laid down graduated from one sixth to a third, two years and six months at least having to be undergone of a sentence of three years; and five years and three months of a sentence of seven. This is the Act which is now mainly in operation.

Briefly to recapitulate these changes, they consist:—

First of the old system of real transportation, under which a convict by exemplary conduct could be hired out on his arrival in a colony,

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

on ticket of leave after 2½ years out of a seven years' sentence, and got a conditional pardon within the colonies after four.

Secondly, of the system of carrying out transportation sentences when transportation itself was compulsorily abandoned, under which the convicts were set at liberty at home on tickets of leave in about the same time without any checks or restraints.

Thirdly of the first Penal Servitude Act of 1853, under which *fixed* sentences were given, four years of penal servitude being the settled substitute of seven years' transportation.

And Fourthly the Penal Servitude Act of 1857, by which the sentences were again unfixed, the intention of which was *to add three years with a corresponding mitigation to each sentence of four years under the previous act*, but which in practice has had exactly the reverse tendency, three years' penal servitude being generally given where seven was the equivalent intended.

Parliament is now called upon to add a fifth and it is to be hoped a final series of changes to these shifting terms of punishment. The largest increase of late years has been in sentences of three years penal servitude, by which prevailing leniency, or mistake, convicts have largely profited, and society has suffered. Had the lowest term been two years, it is not improbable that some professional and many lay judges, whose feelings always incline them to the most lenient apportionment of punishment, or who are either inexperienced or confused as regards the nature of the sentences they pass, would in many cases have assigned it as the smallest modicum of secondary punishment. An examination of the Judicial Statistics will fully prove that it is not gaol punishments which have been converted into this grade of penal servitude sentences, but the substitute for transportation which has been relaxed.

The Commissioners on this point say, in the 46th paragraph of the Report,

"The provision of the Act of 1857, allowing sentences of penal servitude for only three years to be pronounced, was as we believe, introduced under the impression, that there would be too wide an interval between seven years penal servitude, and imprisonment for eighteen months, which, in practice, though not in law, had in general become the maximum term of imprisonment in county prisons, in consequence of its having been found that in many of them, the discipline was too severe to be continued longer with safety. We submit that this difficulty would have been better met by mak-

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

ing provisions for improving the existing arrangements for enforcing sentences of imprisonment."

The change recommended by the Commissioners would necessitate the modification of gaol discipline, and is as follows:

"With respect to length of sentences, we are of opinion that it would be advisable to adopt for penal servitude the same minimum which was formerly in use with respect to Transportation."

Several very important considerations are involved in this proposition, for the fair estimate of which it is necessary to consider what is the just and effective length of a minimum sentence, embracing all the objects which our higher punishments may be considered to involve. Supposing simple coercion be the purpose, the economy of punishment and the saving of public expense alike demand that we should form some approximate calculation in how short a time, on characters of the ordinary class, a certain effect can be produced; or, if we combine that element of punishment with individual reformation, we still require the necessary data as to the time in which a change in principle, and motives of conduct, is likely to be secured. In either case extravagance is to be avoided, while too great a brevity would prove false economy by sacrificing the main purpose in view. It must be remembered that we have, to a certain extent, tried longer sentences than those actually given of late, or fulfilled under the terms of transportation, with results which are not satisfactorily reported of. Sir Joshua Jebb, in one of his reports, referring to the fixed sentences of the first Penal Servitude Act, where four years was the *actual* minimum, now replaced by two and a half, says,

"The system which has superseded Transportation, involving as it does, *far longer periods of imprisonment* than were before enforced, will present to the mind of every convict, and through him to the criminal classes generally, a more severe aspect, and be more dreaded than the shorter periods of confinement, followed by removal to a colony with a ticket-of-leave."

It is much to be regretted that no means were taken to ascertain the effect of these *longer* fixed sentences upon the subsequent conduct of those who experienced them.

As, however, the still longer *intentional* sentences of the Act of 1857 have resulted only in a greater general brevity, those which the Royal Commissioners now propose to inaugurate will actually

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

prove the longest on record. Their suggestion is, to give nothing under seven years duration, and the scale of remission for prisoners discharged at home is to be in proportion to one-third of the sentence, exclusive of the nine months to be passed in separate confinement. This will only enable an exemplary convict, with a seven years sentence, to be liberated on ticket-of-leave at the end of *four years and eleven months*, which, as a practical substitute for the three years sentences,—of which 1154 were passed in 1862,—makes a considerable difference over *two years and a half*, the period at which liberty is now attainable. *It is, in fact, the actual conversion of the minimum sentence of penal servitude, or transportation, from two years and a half, to four years and eleven months, or just doubling it.* Supposing, then, that only the two lower classes of sentences—those of three and four years—were affected by this general raising of the entire scale, if we take the last return of those as any guide to their permanent numbers, an increased prospective expenditure would *annually* be involved of £140,000.* The question thus comes back to one of financial economy, and resolves itself into this: Can no satisfactory or permanent result, on reformatory principles, be expected from a shorter sentence differently administered? To whatever extent the first punishment of penal servitude has hitherto been effective on the individuals undergoing it,—and I am convinced from experience that the proportion is by no means inconsiderable—the country will obviously be involved in an unnecessary outlay by this sweeping change.† The Lord Chief Justice remarks,

"In proportion as the severity of punishment is increased, so may its duration be abridged."

And there is certainly room for increased experiment in this direc-

* The extra time of servitude of 1154 three years convicts would be two years and five months, and of 770 four years convicts one year and eight months; while the average cost of each at a public works prison is at least *L*35 per annum.

† We have, as it is, been advancing very rapidly in the individual cost of criminals to the country. For the financial year 1851-52 the average estimate laid before Parliament for each convict was £24 0s. 5d.; while for the year ending March 1862 the estimate per head was £33 9s. 2d., but the actual cost, irrespective too of many items included in other estimates which I could name, was £37 17s. Here is an increase in ten years in the cost of between 7000 and 8000 convicts which amounts in the aggregate to £100,000.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

tion before having recourse to such expensive prolongations of *all* sentences. This question, moreover, must be kept entirely separate from that of the treatment of old and habitual offenders.

With due deference to the expressed opinion of many experienced prison officers, I differ *in toto* from them in the idea that it is essential to the peace and discipline of prisons, as well as to the reformation of convicts, that there should be a margin of each sentence to be treated upon the principle of mitigation for good conduct. Rewards, as well as punishments, for prison conduct you must have; but the convict knows well enough that this period has been added for the purpose of being so taken off, and that his real sentence is the term to which his nominal one can, by abstinence from very ill conduct, be reduced. He regards, in fact, every day which is added to this as a deprivation of a right, and an additional punishment, so that it might just as well at once be put upon its true footing.

The principle of remission of sentences has been defended on these grounds: First, it is urged that the effect of punishment is fulfilled when repentance and amendment of character ensues. If this were acknowledged, temporary sorrow and contrition follows in some cases so closely on the heels of crime, that it would be scarcely necessary in such instances to assign any punishments. The second renders it essential to good order and discipline in prison,* and the third is derived from the necessity of exercising a certain control over the criminal after his discharge from custody.

This it appears to me can be more satisfactorily provided for in another way. I would keep the scale of sentences to which the public as well as the judges and magistracy have now got habituated, *as they stand, only making them real instead of fictitious;* and I would superadd, by one general act of parliament, a proportionate term—say one half—to every sentence, during which period convicts should be subjected, as a public safeguard against their criminal antecedents, to a certain judicious government supervision. Any criminal acts committed during that time should be liable to be

* The same class of men with fixed sentences who, under the act of 1853, were found so sulky, obdurate, and difficult to manage—as is stated—in the English prisons, were rendered hopeful, industrious and reformed by the intermediate system in Ireland which afforded a sufficient motive power, thus fully proving that mitigation of sentences is *not* essential.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

visited with *extreme* and *special* penalties; and power should also thereby be granted, after trial by a competent tribunal, to prolong the punishment of incorrigible offenders. There would be something straightforward and intelligible in such a mode of procedure.

A sentence of three years' penal servitude fully carried out on an improved system, should certainly be possessed both of a sufficient deterrent and reformatory effect upon first offenders.

It is necessary now to advert to one of those contemplated changes which the Royal Commissioners designate as among the most important of their recommendations; for although it may be doubtful whether this part of their scheme has not already received a *coup de grace*, from an intensity of threatened colonial hostility which no government could safely brave, it does not follow that the much-clamoured-for return to transportation should not assume some other shape; and if this part of the Commissioners' propositions breaks down, the difficulties in the way of home treatment and disposal will certainly not be lessened; while the two questions of an intermediate stage of discipline, and of the supervision of discharged convicts, will acquire still greater importance.

The home view and colonial view of transportation seem very closely to correspond, which, speaking plainly, is merely that of a "moral cesspool." The *Times* says,

> "Drains have a great tendency to choke themselves, at least we never heard of one that did not. The last found sewer by which we thought to rid ourselves of crime is stopped. There is not fall enough. The Australian Colonies are found to be quite on a level with ourselves. So we must see what can be done."

And in a paper called the *West Australian Times*, I find the following colonial estimate of the position of a penal colony:

> "It is a great misfortune to be a penal settlement, but the necessity of the colony (arrived at starvation point) compelled us, in our destitution, to humble ourselves and eat dirt."

It is this honourable office which is now going begging. Untaught by the revelations of Sir William Molesworth's Committee, or the memory of the "Island of Hell," as a witness before a parliamentary committee called "Norfolk Island," the British public still clamours occasionally for some distant rubbish heap where our refuse may be

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

shot, "out of sight and out of mind" instead of looking for some deodorising and useful process of turning even the worst part of society to account. We have abused every colonial opportunity offered us which gave an opening for the dispersion and absorption of the properly trained and tested of our more hopeful criminals* and have invariably packed off the very worst, while even lunatics have been sent out, involving the cost of building an asylum for them. So very recently is this the case, that the Commissioners remark—

"There is reason to fear that getting rid of men who were an incumbrance at home, has sometimes been too much thought of in selecting convicts to be sent to Western Australia."

In arriving at the conclusions to which they have been led, it is quite clear that the Commissioners have exercised the most anxious care to avoid a recurrence of these evils; and their main object has evidently been, to provide a means of colonial disposal of convicts,

* I have all along held that the chances of the continued reformation and permanent well-doing of certain classes of convicts who are not intrinsically or hopelessly vicious, are infinitely greater in a colonial life, and that the only safe and permanent policy would have been so to form an outlet for the *best*, after fair trial by the most approved tests. *The Times* says, "Mr. Measor's view of the case is singular. He approves transportation, and does not consider it impracticable; only, instead of transporting the worst offenders, he would transport those more hopefully constituted. But this proposition leaves half the case untouched. Assuming, as we have no objection to do, that a released criminal had better be in a young colony than at home, what is to be done with those offenders who, in Mr. Measor's eyes, are too bad to be transported? Are they to be released at home, as unfit for colonial society, or are they not to be released at all?"—*The Times*, *Dec.* 11*th*, 1862.

Most unquestionably our only honourable, and most politic course, is to keep the worst at home. It is the *experimentum crucis* of the home treatment of this difficult subject. With discretion, we could have retained many of our colonial means of criminal disposal; but on account of our abuse of them, they have been closed against us. It is the same case as with our ticket-of-leave system, in which cause and effect have been so confused by mal-administration. Had the men who were abusing their licenses been checked in their new criminal career, the reformed and better disposed would not have been looked upon as the holders of a "license" to do wrong, or the difficulties of discharged convicts enhanced by what should have been a protection to them. In like manner, the experience of our Australian colonies proves that we have given them the benefit of our very worst offenders.



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

presenting some chance of making them useful members of society. Their resolution is,

"That all male convicts, who are not disqualified for removal to a colony, should be sent to Western Australia during the latter part of their punishment."

The question resolves itself into how far they are right in supposing that there is any sufficient absorbing power in the one settlement which has voluntarily offered to take our convicts. Earl Grey, the chairman of the Commission, said, upon the same subject, ten years ago,

"If the object is merely to keep convicts in safe custody, there is no place where this can be done so well or so cheaply as at home."

And his Lordship, whose experience on the subject is perhaps unequalled in either House of Parliament, also said,

"What was wanted was a place to send convicts to, *where they might form only a small proportion of the population.*"

which is very irreconcilable with the paragraph in the Commissioners' Report, in which they thus express their opinion:

"We believe that it is highly desirable to send convicts, under proper regulations, and without disguise, to a *thinly-peopled colony*, where they may be removed from their former temptations, where they may be sure of having the means of maintaining themselves, and where facilities exist for keeping them under more efficient control than is practicable in this country, with its great cities and large population."

For convicts permanently to do well under such a protected liberty, it appears necessary to regard it, in its two separate aspects, as a period of probation, and a means of disposal; and in either light the moral tone, character and antecedents of the absorbing population are evidently matters of primary importance. The Executive Council of the government of Victoria well remark in their minute of the 26th August, 1856,

"If criminals are to be reformed by being dispersed among a free population, it must be by the influence which a large majority of the honest and industrious exercise over the evil-disposed."

And if freedom on ticket-of-leave be regarded not merely as a reformatory process, but as a settlement for life of a large portion of the criminal class, it is essentially necessary to prevent any part of our colonial possessions becoming incurably tainted. At the

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

present moment the population of Western Australia, which consists of some sixteen thousand persons, is, in origin, criminal to the extent of more than a third, and irrespective of the eventual consequences which we may from past experience of purely penal settlements safely predicate, it is very desirable to examine the motives of the colonists, and enquire into the dependence which can be placed on such an arrangement as a permanence.

The Western Australians tell us, in one of their memorials, that they

"Have hitherto had the satisfaction of believing that the interests of society have benefited on the whole by the transformation of this free colony into a penal settlement,"

And that

"As a system of benevolence and humanity worthy of a great nation, the present system of transportation stands preeminent."

But it soon appears for whose benefit this system of "benevolence" is to be maintained, for in the next sentence they say

"*If now done away with, this colony will sink into ruin.*"

They tell us elsewhere, distinctly, that they do not want convicts whose sentences are so far advanced that they are eligible for tickets of leave. What they desire and entreat us to send is large bodies of convicts with a considerable portion of their sentences yet to serve, who can be employed on government works, at the expense of the imperial treasury. As Mr. Hastings says,*

"They know well enough that a number of convicts in a colony means a considerable garrison of troops, and a large civil staff; it means the building and keeping up of barracks and prisons; it means a lucrative outlay on public works."

But although they consent as a *quid pro quo* for all this unnecessary outlay, to afford such employment as they can give to ticket-of-leave men, when their drooping colony has advanced a few steps in wealth and importance, what security do we possess that they will not follow the example of our other penal settlements, and, retaining our improvements, bid us seek some other spot on the wide world's surface for depositing the refuse of our crime. Either the "thinly-peopled colony" will have become a moral pest to its neighbours,

* Discussion on Transportation, by the National Association for the Promotion of Social Science.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

through the want of a majority capable of exercising a purifying influence on felon profligacy,* or it will be in its own eyes too respectable to retain any longer the ladder by which it has risen. This is acknowledged by Captain Kennedy, the late governor of Western Australia, who says that "*it is more than probable*" that when the prosperity of the colony is secured, the colonists will refuse to receive any more convicts. The cost of this imperial fertilization of a barren colony, presenting few, or no, attractions to free immigrants, forms by no means an unimportant element in the general estimate of its desirability. Although a certain diminution of the time to serve on public works, not defined by the Commissioners, will be granted to those sent to Western Australia, it must be remembered that *all* the sentences are, in the first place, proposed to be lengthened, and all convicts, as far as length of sentence is concerned, would then be eligible for transportation. Whereas only some ten

* The advantages in the way of reformatory discipline to be attained at home can never be equally secured in a distant colony. Mr. Torrens, who has had twenty-one years Australian experience, stated before the Law Amendment Society, 'The mode in which sentences are carried out in the colonies, and the position and prospects of the convicts, are rather calculated to stimulate crime than to deter from its perpetration :' and, if the Chaplain of the Freemantle Establishment is to be believed, the plague spot of Norfolk Island is already visible in this, our last colonial penal experiment. He says, "First, as regards that crying and still unabated evil, the great inequality of the sexes in this colony. Men have been brought before magistrates, and sent into the establishment, for various periods, during the past year, for crimes of a most horrible description. I do not say there have been more than usual, but I fear the evil does not decrease ; and, as has been observed to me, a most shocking feature in all this, is *the indifference with which such crimes seem to be regarded by the general body of these men. It is surely horrible that men sober enough to interfere should stand by, nay permit, nay even encourage those shocking crimes, as I have been assured has been the case in several instances.*" Drunkenness also, according to the same reverend gentleman, has arrived at a most disgusting climax in this colony. He speaks of this bestial vice having arrived at a developement at which men "have called for a gallon, or two or three gallons, of brandy at a time ; they and their fellows have dipped pint pots into it, and drank themselves stupid, and at length insensible, falling even whilst in the act of roaring hideous songs and blasphemies ;" and of their spending £30 and £40 at a public house tap in a week. It would appear truly not so moral a population as would leaven the mass of felon vice.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

or fifteen per cent. have in recent years been so disposed of, about eighty per cent. would, taking into consideration the restrictions laid down, be actually eligible. Taking the increased number of those eligible at 1500—which would be a very moderate estimate—it will signify in cost the addition, for every year that they are to pass at the Swan River settlement, instead of the home Public Works Prisons, of the difference between £67* and £35 in their cost of maintenance. This will give, in round numbers, the difference between £100,000 and £52,000 in the annual cost for one or more years, of the punishment of fifteen hundred of those annually sentenced to penal servitude, exclusive of the loss of £30,000 more, consisting of the value of their labour lost to this country, where works of great national importance are required; or a total loss to home tax-payers of about £80,000 at the very least, for each year that these convicts are maintained abroad instead of at home; while it is even the wish of these generous colonists to take, as they have expressed themselves to the Colonial Secretary, those who have nearly the whole of their sentences to run; in fact, the national expenditure on confiscated labour is, to their mind, a bounty from the home government for the clearance of their country, and the construction of roads, bridges, and other costly works.

It may, perhaps, be urged, that if part of the sentence involves greater cost of maintenance for awhile in Australia, it will be shortened by the earlier liberation on ticket-of-leave; but even the cost of a convict so situated is, we are told, £13 per annum, so that no saving will accrue in consequence of the diminution of the term of actual imprisonment. Irrespective, then, of the remonstrances of the Inter-Colonial Transportation Committee, and the intimation that such a project as that contemplated "will embitter all relations with Her Majesty's Australian subjects in the future, and the earnest petitions to the throne from the governments of New South Wales, Tasmania, South Australia, and Victoria, that "the trans-

* "The conclusion, therefore, submitted is, that the annual cost of every convict in Western Australia, over and above £22 for taking him out, is, in round numbers, £67 for each man in prison, and £13 for each man at large in the colony with a ticket of leave."—*Letter of Mr T. Frederick Elliott, Assistant Under Secretary for the Colonies, laid before the Committee of the House of Commons on Transportation.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

portation of convicts from the United Kingdom to Western Australia should cease, as daily experience proves that the existence of a penal settlement there inflicts much injury upon these colonies;" as also of the strong expression of the Legislative Assembly of Victoria, that such a course would be to them "disheartening beyond endurance," and that it is their "firm determination to offer all the resistance in their power to so terrible a calamity," the matter has most serious bearings upon financial economy and upon our moral right in a "thinly peopled settlement to repeat the experiment of that moral monster, a penal colony, emptying upon another shore the cesspool of our own past infamy and crimes, and there encouraging it to ferment into life."*

All the arguments which have been used against the extension of the Western Australian penal settlement recommended by the Commissioners would of course operate with equal, if not greater force, against the creation of any new settlement for this express purpose. As regards the extent to which it had previously been used, it would perhaps be undesirable that we should be hindered from deporting some of our longest sentenced prisoners—presuming them to be better selected and disciplined—to the Swan River at the late moderate rate, as it would cause a considerable accumulation of difficulties to the English government.† The policy of forcing the extension proposed however, would be suicidal; and no government would be willing to undertake the responsibility of alienating the loyalty of the Australian Colonies on such grounds. So, as *The Times* says, "we must see what can be done."

It is no easy matter to suggest a course in the face of such extreme difficulties, especially when we have succeeded in making public feeling antagonist to the chances of liberated convicts. We have been for years parading a satisfaction we did not feel, and freely making use of certain figures apparently in our favour, while we have made no attempt to ascertain, if we have not positively ignored, the real statistics upon which the whole case rests. Negative evidence has a tendency to leave those who make use of it in the lurch; so while we have been trumpeting as a success what has been

* *Christian Politics, by the Rev. William Sewell, B.D., Professor of Moral Philosophy in the University of Oxford.*

† Such is the present expressed determination of the government.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

little short of a failure, it is almost amusing to see how our statements have been used against us. Thus, the minute of the Executive Committee of the Australian Colonies signed among others by Mr. Childers, at once points to this blot. After reciting the evils of which we complain in "the difficulty of released prisoners obtaining honest employment," and our assertion that "their release is a serious evil and source of danger to the country" it refers to the figures advanced by the chief convict authority in England, shewing that out of all those released under the new system, only 8 per cent. had been re-committed; and the minute continues,

"It is presumed that no doubts can be raised as to the accuracy of a report emanating from a person of such high reputation. It may, therefore, be at once inferred *that the United Kingdom is able, without serious injury either to her general interests or to the convicts themselves to permit their return into the body of her community.*"

This style of argument appears almost unanswerable, for either we must have been parading as facts what we did not ourselves believe, or we have been getting on remarkably well if 80 per cent. of our discharged convicts have really become absorbed at home into honest employments; and we have consequently no such urgent occasion to solicit a degrading office from our colonies. Without any intention either of self deception or misleading others, this absurd position comes entirely of mistaking the force of negative statistics. We now very shrewdly suspect, and ought to have proved, that a much larger proportion of our discharged convicts return to crime; but we have been contented with assuming as regards every member of our host of habitual offenders that "no news was good news."

The figures, however, which have been published only relate to convicts who obtained licences for the mitigated portion of sentences of transportation or of sentences under the new Penal Servitude Act. All who were sentenced under the Penal Servitude Act of 1853 are entirely omitted, as if it were an unimportant matter to know what had become of *nine thousand convicts sentenced between* 1853 *and* 1857; and while on this point I would remark how important it would have been to have ascertained as far as possible from their subsequent careers the effect of fixed sentences as compared with those the terms of which depend upon prison conduct.

What has really been given us are merely tables relating to such

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

convicts as, having been discharged on licence, have afterwards been thrust under the very nose of the Home Office; and then the statistics of re-conviction relate only to those re-sentenced to penal servitude or transportation—not including ordinary gaol punishments at all—and we have in addition only the particular cases in which the licences have actually been revoked. As regards the latter we are not informed of the misconduct of those reported whose term of ticket-of-leave was out, or had so little unexpired that it was not worth while to revoke their licences; while as to the former we are left to a general search through the prisons of the kingdom for old "lags" whose antecedents were unknown at their trials, and whose "bliss" in short prison sentences is consequently the result of the local "ignorance" of them which a change in the scene of their "operations" can generally command.*

Whether by periods taken out of their sentences and measured by their actual labour and industry, or by a regulation generally imposed adding a term of supervision in proportion to the sentence, there is no doubt that our convicts at home must for the future be looked after. The report of the Royal Commissioners says,

"Effective control and supervision would afford the best prospect of giving to society a real protection against criminals without subjecting them to undue severity."

Two years ago I submitted through Sir Joshua Jebb to the Home Secretary a plan for ensuring such "effective control and supervision" by means of a distinct department to be called the "Discharged Convict Office," the duties of which would be essentially for public protection, and the collection of reliable statistics as regards the subsequent conduct of all persons sentenced to Penal Servi-

* In a note to one of Captain Whitty's returns of reconvicted men, he says "Since June, 1859, the greater number of those who have been re-convicted *have been recognised in the County Prisons before trial, and notified to the judges as habitual offenders;* the result being, in many instances, the return to the convict prisons of criminals who might otherwise have received sentences of imprisonment only."

It is very difficult to see why this system of Sir Walter Crofton's, which we are here assured has borne such excellent fruit in getting the right men into the right places, should not be adopted in England; but to accomplish it on so large a scale, a very active and special department of supervision and identification is necessary.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

tude.* While such a department might materially assist all well intentioned and well-doing convicts in their peculiar difficulties in the search for honest employment, by communication with discharged prisoners' aid societies and philanthropic individuals throughout the country, it would be a most fatal mistake to look upon it only with that view. No mere extension of the "Discharged Prisoners' Aid Society" will meet the case, which is essentially one of public aid and protection, to secure that every honestly-disposed liberated convict shall confidentially communicate with an appointed officer of government for a certain given time after his discharge, and that such strict enquiries shall be made as shall circumscribe the licentious freedom enjoyed by too many. Police supervision is not our only resource in this very delicate matter, but a proper machinery throughout the country could be very easily set on foot for the verification of the statements of ex-convicts, as to their subsequent conduct and mode of livelihood. It may be true that there is no exact English term into which to translate "espionage," but if we regard facts stripped of sentimentality, we shall see no declension from our national abhorrence of concealment and subterfuge, in giving the criminal classes whose proclivities are proved by their antecedents and convictions, and who return to their well-known haunts, to prowl about when

"Nought is waking
Save Mischief and Faking,"

to understand and feel that they are watched. To grieve over such a contraction of criminal immunity appears rather to be the exercise of

"False sorrow's eye,
Which for things true, weeps things imaginary."

For the police to be instructed to shew less distrust of known offen-

* My proposals were directed to the practical attainment of the two essential objects of affording every proper facility to the struggling and honestly intentioned convict, and keeping a close check upon the unpromising and relapsing. In certain cases only would the aid of the police be necessary, when their duties would require to be guarded by strict caution. A careful analysis of the character and antecedents of each liberated convict would be the guide as to the primary course to be adopted; and the shrinking from supervision thus carefully carried out would in itself be the betrayal of criminal proclivities deservedly punishable by severe measures. Ex-convicts so escaping from a safeguard necessary for society would, when detected, stly deserve to be branded so as to ensure their future identification.



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

ders when they frequent the recognized haunts of crime, than of other persons whom they find there, and proved recent punishment to be constituted a "*carte blanché*" to dens of infamy* holding "ticket-of-leave men" harmless in that association which leads to combinations for the purposes of burglary and theft, while there is no other mode of government control over them, seems nothing short of a sacrifice of public safety to sentiment.

But, supposing the ticket of-leave system in England to be constituted a real one, there is one inconsistency appertaining to it which has scarcely been remarked, to which I would draw attention, as it has led me greatly to the conclusion, that it is better to *superadd* the term of surveillance, than to take it off the allotted sentence. It is this : that, in the latter case, the period of safeguard after punishment is in inverse proportion to the requirements of the individual. Let us suppose the minimum term of penal servitude to be fixed, as is now proposed by the government, at five years, and that it is commutable, by industry and good conduct, to three-and-a-half, which I have no doubt the Home Secretary intends. It necessarily follows that the most industrious and self-governed have the longest period of supervision; and that those who, by bad conduct, idleness, and insubordination, have been compelled to serve a greater portion of their sentences, relatively reduce the subsequent precautionary period; the man who has proved himself least fit for the right exercise of liberty, getting sooner after discharge into the atmosphere of perfect freedom. It may be said that he will sooner prove his unfitness for it; but this cannot be ensured; and it is, I think, a strong reason not only for adding the supervision, but for fixing its duration on a sliding scale proportioned to each particular case.

It is most satisfactory to note the very strong opinion enunciated by the Royal Commissioners, in reference to the money reward

* With regard to the enforcement of the Public Houses Act, the police were directed, while they noticed the old convicts, not to notice or point out the ticket-of-leave or license holders—"They were looked upon as persons who must be considered reformed, and therefore the police were not to notice them, lest it might make them known, and interfere with their getting employment."—*Evidence of Sir Richard Mayne before the Royal Commission.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

which has heretofore been annexed to the negative excellence of quiet and submissive prison demeanour.* They say,

"We think it wrong that credit should be given for general good conduct as well as for industry. Good conduct in a prison—apart from industry—can consist only in abstaining from misconduct, which gives no just claim to reward."

If this principle be fully carried out, it will go to the very root of the discipline of our convict prisons, establishing it on the proper basis of punishment fearlessly maintained; and had it been adopted years ago, it would have saved thousands unnecessarily, if not banefully, expended, which have contributed to foster the cunning and effrontery of the criminal class, who, associated in large numbers, imagined that they were in a position to maintain "rights," and dictate terms to the governing power. The substitution of smaller prisons for huge criminal barracks,† and the association together of

* "Prisoners should be made to be respectful, orderly, cleanly, and obedient, irrespective of reward; and it is as absurd to attach a shilling a week to the fact of a convict's not assaulting his warder, or being insolent, as it would be to reward free men for keeping the Queen's peace towards their neighbours, or guarding their hands from entering other people's pockets. You thus destroy the first idea with which prisoners should be impressed, namely, that laws should be respected either for their own sake, or from fear of punishment.—*Letter to Sir G. C. Lewis, Secretary of State for the Home Department.*

† The Royal Commissioners say in the 51st paragraph of their report, "In England, though the convicts have separate cells at night, the whole body are paraded together when they go out to work and on other occasions. This is both unfavourable to the best system of discipline, and dangerous in the event of a disturbance, as was shewn by the outbreak at Chatham in 1861. It would be desirable that convicts should be divided into bodies, not exceeding from two to three hundred each, and that these bodies should be prevented from having any communication with each other."

A few weeks before the Chatham mutiny, I thus expressed myself on the subject: "It is not a little strange that a system, which commences with uselessly stern separation, ends with the indiscriminate congregation of criminals; and this mistake seems to have reached its culminating point in the construction of the last "model" prison for public works at Chatham, where there are 1104 small separate corrugated iron cells in one undivided buildings, multiplying the difficulties of management, and on any occasion of general disaffection among the convicts, not unattended with positive danger." —*Letter to Sir G. C. Lewis, Secretary of State for the Home Department.* My apprehensions were certainly too soon, and painfully, verified.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

those who are of more nearly equal conduct and advancement, is also a safe and most judicious remedy against late evils, to which the Royal Commission has given its full sanction. But among other improvements, it is essential that some special establishment for incorrigibles, and some prison for the oft-convicted, should be founded. We can no longer send, even to Western Australia, the characters we have been used to send, simply because, having no fit place at home, we wanted to be rid of them. Experience will soon prove that this is a liberty with our one chance of transportation which will bring back upon us fearful retribution. There are many places where such an establishment, on the severest form of discipline, might be founded; but I know none apparently preferable to some of the islands on the West Coast of Ireland,* from which branch establishments could be formed for carrying on such works as harbours of refuge, which are so much required. If the convict undergoing his second or third sentence, were kept entirely distinct from those who are, comparatively speaking, novices in crime, the result would be to encourage that dread of cumulative and severe punishment which is so much wanting.

To recur, for a moment to the sub-division of prisons as the groundwork of an improved system of convict classification: there is no doubt that such a measure ought to prove both effective and economical; but it will only tend to maintain most unnecessary expenditure if not taken advantage of to diminish the close supervision of convicts in the more advanced classes, and to dispense with the presence of so many officers in their isolation, which was necessary when all stages and characters were jumbled together. This erroneous system has been the cause of increasing the number of convict officers by about a fourth within the last ten years. In proportion, however, as convicts benefit by control, and attain a state of disci-

* Clare Island, on the coast of Mayo, was brought under the consideration of the Irish Government some twelve years since, as a suitable position for a convict establishment, and was, I believe, favourably reported on. Its area occupies about 4000 acres. There are also the islands of Innish-turk, with an average of 1500, and Innish Boffin, comprising 2400 acres, which could either of them be adapted for this purpose. All these islands are in Clew Bay, but there are some others in the Bay of Galway which might be nearer necessary works, and might possibly be obtained.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

pline, the means by which it is arrived at can gradually, and with good result, be relaxed. It is unnecessary to keep up the scaffolding when the building is advanced. The principle, moreover, of removal from class to class should not only be conceded as a reward for certain progress in self-government and industry, but as a further test in each case of progressive reformation. If their previous training is of any value, when convicts' sentences are half finished, their supervision ought to be capable of being diminished without danger; and, if they are really intended to rejoin society, their state should be as nearly as possible assimilated to a condition of freedom as a final trial. These are the principles of Sir Walter Crofton's successful experiment; and they commend themselves at once to common sense.

Without the government itself granting any inconsistent indulgences to them, a small share of gratuities genuinely earned, dispensed weekly to them in their final stage of detention, seems a very fitting mode of encouragement and trial. The enlightenment of their minds on really useful subjects connected with their future career is also, at this point of their progress, much better secured by lectures and associated examinations, than in any other way.

I pass on now to the consideration of those lesser terms of imprisonment in gaols which have occupied the attention of the Committee of the House of Lords, and of the principles of punishment connected therewith, which their Lordships, or a majority of them have laid down.*

It has been assumed by some recent writers upon this subject, that short terms of punishment, on account of their brevity, must

* "At the Michaelmas Quarter Sessions for the North Riding of Yorkshire which had just taken place, the Chairman, Earl Cathcart, is reported to have said:—'During the late session of Parliament, a Royal Commission and a Committee of the House of Lords were appointed to make inquiries with respect to convict and prison discipline. He served on the Committee of the Lords, but the Royal Commission led them in one direction, and the Report of the Prisons Committee drew them back in another. He did not think the Report of that Committee conveyed the weight of the evidence that was given; at least the weight of the evidence made a totally different impression in many essential particulars on his mind. In his humble opinion, the weight of the evidence was not quite as stated in the Report.' "—*Civil Service Gazette, Oct. 31st*, 1863.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

exclude all reference to improving influences, or a reformatory process; but while it would be obviously unreasonable to expect any great results from too insignificant causes, or to suppose that the walls of a prison should exercise any magical transformation of the moral character of its inmates, it certainly appears to me that the spirit and intent of all ordinary methods of criminal correction should be alike. Both in a practical and in a moral point of view, the educatory or reforming, and the punitive, or, more generally miscalled "corrective," elements of punishment, cannot be totally separated, and the suffering, as a conveyed lesson, cannot stand by itself. The reverse conclusion ignores two very important facts, namely, the double character of society as a moral and physical power, and the complex constitution of the offender as a human being influenced through his mind as well as his body, by fear and by consideration. It may be necessary, more in some cases than in others, to have recourse to physical suffering, but that punishment which ignores anything beyond it, is distinctly not exercised in the spirit of a trust on behalf of the Moral Governor of the world towards our fellow-man, and is therefore both incomplete and wrong. It is in this light that corporal punishment standing alone, appears perfectly indefensible. It pre-supposes that a man is so thoroughly reduced to the level of the brute, that he can be approached in no other manner than by bodily pain; and it turns him back at once upon society the brute that he is, only possessed of seven devils in the place of one. I am far from thinking or saying that corporal punishment is unnecessary. I believe it, on the other hand, to be essential in prison discipline, but I would confine it thereto.

On the same principle, all the other developements of the "sharp and short" method of punishment, which are purely coercive, irksome, and disabling, end by fulfilling only one purpose of criminal correction; and implant a feeling of hatred of the law and its administrators which effectually shuts the door to all hope of the offender's reformation. As regards the simple point of the condensation of punishment, as much suffering could doubtless be brought into a week's, or even a day's space, as would have a formidably deterrent effect; but the general feeling of society will certainly revolt at the imposition of profitless pain upon those wretched classes of society, from whom the greater proportion of our gaol prisoners are brought.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

It is all very well to trust to general rules and government control, but the almost total break down of the system of prison inspection* through the localization of power, shews how little we can depend on the maintenance of uniformity or moderation, where the consequences of extremes are so very serious; while there is nothing which is in reality so easily learnt, or the spirit of which has ever proved so contagious, as cruelty. The penal sanctions of the law are of no avail, without the additional sanction of public opinion; and that opinion is ever liable to fluctuate, sometimes even shifting with most marvellous rapidity. It has not strongly expressed itself as regards gaol punishments in which inequality and want of uniformity have principally been found by the Lords' Committee, and it would therefore not have very much to withdraw from, although it has been for years demanding some change in the convict system. If, therefore, the changes therein are not very carefully and judiciously made, the sympathy which is at present so clearly with the law and its adminstration, would very soon be effectually felt to be in the other direction; and the occurrence of a few cases of a much lighter type of severity than those of the Birmingham gaol would very soon transfer the sympathy to the criminal. The unpaid Magistracy of the country are the only judges who have the carrying out of their own sentences; and it is consequently unfortunate that "Justice's Justice" should occasionally indulge in freaks* productive of strong adverse popular feeling.

The principal features of the report of the House of Lords' Committee on prison discipline, the tendency of which is questionable, relate to the occupation and rest of minor offenders, and the application to them of a hitherto unknown severity.

Their recommendations to enforce greater uniformity in the con-

* "For years past, the inspection of prisons has been reduced in most cases to a mere formality."—*Lords' Report.*

† Among recent instances, I have not heard of any authentic contradiction of the following—

'PUNISHED FOR LIVING TOO LONG.—A pauper in the Uckfield Union, named William Novies, aged 82, was charged before the magistrates with refusing to work, The poor old man, who had lived twelve years beyond the three-score years and ten allotted to man, said he was unable to work; but their worships thought differently, and sentenced him to 21 days hard labour.—*Brighton Examiner.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

struction of gaols, and prison rules, as well as the substitution of a more regular scale of dietary, can be open to no objection; while as regards the indentification of previously convicted prisoners, and the increased force necessary to be given to prison inspection by the Home Secretary, their remarks and suggestions render valuable aid in the consolidation of an improved system.

Their most serious departure, however, from the principles of reformatory science is in reference to labour.

Their views upon this subject may be gathered from the following extracts:—

"The Committee have had their attention strongly directed by many witnesses, on the ground both of profit and of individual reformation, to various modes of industrial employment which are provided in different gaols with more or less success. They are of opinion that a profitable return from industrial employment ought not to be made the test of prison efficiency."

As to what constitutes "hard labour," they say

"Of the various forms which are in force in the several prisons, the treadwheel, crank, and shot-drill alone appear to the Committee properly to merit the designation of hard labour——Industrial occupation, though it may vary in amount and character, is so much less penal, irksome, and fatiguing, that it can only be classed under the head of light labour. The picking of oakum must be regarded as an intermediate form of work; but under no circumstances and to no class of prisoners, can industrial occupation be made an equivalent for a corresponding amount of hard labour as administered by means of the wheel, the crank, and the shot drill."

And again,

"It has been alleged in the course of the evidence, that the use of the treadwheel, and crank, degrades, irritates, and demoralizes the prisoner; but the Committee, after full consideration, see no reason for entertaining this opinion, and, under certain conditions, they highly approve of the use of both these instruments of prison discipline. * * * If the local authorities can make use of the crank or treadwheel for productive work, the Committee see no reason to object to such an arrangement; but they think it essential that every prisoner sentenced to hard labour should be employed upon the crank or treadwheel for a minimum period, and that in no case should the regular enforcement of this system be relinquished or impaired for the sake of making the labour remunerative."

According to this, "hard labour" can consist of nothing which is not nearly, if not altogether useless! for make what use you choose of the power of a tread-wheel, or crank, you are still wasting human la-

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

bour when you expend it simply in a motive power, which in this age of science is procurable at a most insignificant cost; while shot-drill has not even the apology of being applicable to anything but pure human torture. Their Lordships, however, recommend that their definition of "hard labour" shall be made universally compulsory by Act of Parliament, under penalty of every offending place of punishment forfeiting its claim to the Treasury allowance. Before proceeding further in the question, it may be as well to examine how their Lordships' views are supported by the evidence taken before them, for while it may be quite competent to them to come to such an enquiry with their own preconceived opinions, safe legislation would scarcely result from following simply their foregone and unpractical conclusions. I find then, on an analysis of the evidence taken before them, that, as regards the tread-wheel alone—and only one of the witnesses entering into a comparison between it and industrial occupations—they have three governors of prisons in their favour; these three governors had 6,200 committals to their prisons in 1862. Against these, however, there are the opinions of six governors, whose combined committals during the same year amounted to 17,573. The opinions of the two inspectors of prisons, who have had the most universal experience of the efficacy of such punishments, is decidedly adverse to them. Mr. Perry says, as regards the tread-wheel, that he entirely agrees with Dr. Trail, Professor of Medical Jurisprudence in the University of Edinburgh, that to the sedentary "it is a grievous punishment, giving intolerable pains in the legs and spine;" and adds,

"I am an advocate for doing away with it altogether, when its place can be supplied by industrial labour."

Mr. Voules, the other prison inspector, states that he disapproves of the tread-wheel as an instrument of punishment, and also says,

"I think, speaking generally of the crank and the tread-wheel, that it lowers and degrades a man who is well disposed, and though you may fail in improving some men by employing them in industrial labour, still you sacrifice the well disposed by putting them on the tread-wheel."

Mr. Merry, the Chairman of the Visiting Justices of Reading Gaol, says,

"We were the first to have the tread-wheel, and, I am happy to say, we were the first to give it up, finding it a most useless mistake."



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Mr. Shepherd, the governor of the West Riding Prison, says,

"The tread-wheel is so uncertain a punishment that it was given up.—I believe the tread-wheel is an irritating punishment."

Mr. Gardner, the governor of Bristol Gaol, says,

"The tread-wheel is no good as an instrument of penal discipline."

Mr. Keene, the governor of Leeds Borough Gaol, says,

"I prefer industrial labour over the tread-wheel and crank."

And Mr. Colville, the governor of Cold Bath Field Prison, says,

"I do not think you deter a man from going to prison by such punishments. I think unproductive labour has a bad effect on the mind."

The practical evidence of the several governors who are to any extent in favour of the Committee's views is somewhat conflicting. Major Fulford, governor of Stafford Gaol, says,

"I am generally in favour of the tread-wheel.—I do not believe the tread-wheel has a tendency to degrade and irritate one bit."

Mr. Pinson, governor of Norwich Gaol, says,

"I never heard a sound of its irritation. I would reduce the work on the tread-wheel in proportion as industrial occupation is allowed to take its place."

Mr. Linton, the governor of the West Sussex Gaol, says,

"I have not seen any signs of irritation on the part of the prisoners at being employed at unproductive labour. The tread-wheel is undoubtedly debilitating."

Unless the members of Lord Carnarvon's Committee have attached more than ordinary weight to the opinions of some of the witnesses, the preponderance of the evidence as given on this subject is not, as Earl Cathcart says, exactly with their report; the little value they have set upon "industrial employment" is also even less supported by the governors of gaols, those who were even in favour of the tread-wheel and crank, giving the following evidence:—

Major Fulford saying

"I prefer a medium between compulsory hard labour and industrial occupation."

Mr. Pinson,

"Every man at first goes to the tread-wheel, and then I judge whether he will be worth anything or not in industrial occupation."

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

And Mr. Linton,

"If I get a fair day's work out of a man in industrial occupation, I consider that I am carrying out his sentence of hard labour."

Those witnesses, of course, who were adverse to useless compulsory labour are strongly in favour of these various modes of industrial employment. Among them, Mr. Shepherd, of Wakefield, says,

"We pursue industrial labour very attentively; it is made a thorough business of, and it is considered a great part of the prison discipline. The habit of industry, when formed, makes labour pleasant instead of irksome, when a man goes out of prison."

The evidence of the other witnesses is equally strong and conclusive. A proper spirit of humanity and indulgence are as far asunder as the poles, and not only can prisoners' labour generally, be utilized, but, even in short sentences, useful work can be so imposed as to form the main ingredient in a severe punishment without degradation to self-respect; while, when you have already lowered the offender to irksome, useless, and disabling toil, unprofitable even for the brute creation,—for who provides a beast with provender to do work which a twentieth part of the cost of its keep would accomplish by mechanical power?—you have nothing further to work upon. Beginning with an infliction for the mere purpose of causing pain, over those who get inured to it all other influences will be useless. The best system of prison discipline is clearly that in which useful labour, made as severe and as prolonged as it consistently can, forms the staple of punishment, while duly graduated coercion is held *in terrorem* over the criminal to compel his performance of certain acts, and to induce his refraining from others. This proves in practice the most satisfactory, because it is the most natural system of discipline. You say to the criminal, "You are not sent here to be fed and be idle. It is the law of Providence that the necessaries of subsistence depend upon personal activity. The law of a prison gives less and requires more; but the principle is the same. You can improve your position, or make it worse; work and earn a scanty sufficiency; or rebel against authority and your own interests by idleness and disobedience. In that case you will only just be kept alive, and we have then no other alternative but to appeal by coercion to your sense of pain."

There is another most important suggestion of their Lordships',

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

which, generally applied to prisoners undergoing a hard labour sentence, appears to me to approach very nearly to the verge of cruelty. It is this:

"The Committee recommend that, during short sentences, or the earlier stages of a long confinement, the prisoners should be made to dispense with the use of a mattress, and should sleep upon planks."

I do not speak on this subject without some practical knowledge, for I remember many a poor, ignorant, brutalized wretch, upon whom words of advice and kindness have been thrown away, break down a good constitution, or bring himself to an untimely grave, by real self-infliction, through sheer obstinacy, and resistance to prison authority, of a long succession of punishments for insubordinate conduct; and I know, from having visited such at all hours of the night, how fearful are the cramps and sufferings which result from a continuance of this miscalled "rest" upon a bare floor. I do their Lordships' better feelings, I am sure, no injustice, when I say that they cannot have fully considered this fearful suggestion; or when I suggest that they would revolt from its practical effect, could they for one moment realize what a continued punishment of this nature would be to men taken from eight hours' treadwheel, or other hard labour. No; let them reduce the sleep of prisoners, if they will, to the moderate and reasonable uniform allowance of eight hours, but let rest be rest, even for the criminal, under ordinary circumstances, when he has not himself aggravated his punishment, and not prolonged torture. When we would scorn to refuse our well-cared-for beasts a litter, let us not, in Christian England, after devising every means for making labour irksome, add, as an ordinary element of punishment, the cruel withdrawal of

"Gentle sleep,
Nature's soft nurse."

Rather to those whose memory is of evil, and whose consciousness of pain, whose waking hours in proportion as they reflect on the past, is one prolonged distress and torture, let us extend in due reason, nature's one intermittent in "life's fitful fever," the opiate of the miserable. Even the hardiest criminal, who does his full share of work, is entitled to this; but the operation of such a general rule would fall most severely upon the weakest, and those who would be already the most punished by the labour.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

There are, no doubt, several valuable suggestions in this Report relating to improved classification, the introduction of marks, and the institution in every gaol of that principle of progress by industry which proves so great an aid to discipline, in addition to the means which their Lordships recommend, based on Sir Walter Crofton's evidence, for facilitating the identification of habitual offenders. The excellence of these parts, however, and the useful result which will undoubtedly accrue from their Lordships' labours in the establishment of prison discipline throughout the kingdom upon a basis of uniformity, properly checked and directed by the Home Office, will not permit me to overlook the dangerous tendency to an exploded theory of punishment which distinguishes some of the suggestions on which I have commented. With reference to separate confinement,

"The Committee recommend that legislative measures be taken as speedily as possible to render the adoption of separation obligatory upon all gaols and houses of correction in England and Wales; and that the payment of the proportion of the charge now issued from the public revenues in aid of the County and Borough Prisons, be made contingent in each case on the adoption of the separate system."

A constructional separation in gaols is undoubtedly a safeguard against some very pregnant evils; but the system of separate confinement requires, to my mind, to be very cautiously used; and whatever may be its deterring effects, is not productive of the much vaunted results for which it has, in certain quarters, obtained credit. To very short sentences, and as the initiatory stage of long ones, it may with benefit be applied; but its permanent effects—perhaps not discoverable in some cases till long afterwards,—combined with its costliness, and unavoidable waste of labour, render it by no means the reformatory appliance which some would wish us to believe it. The late Dr. Baly's opinion of it, Physician to Her Majesty, and for many years Medical Superintendent of Millbank Prison, was—

"When this punishment is continued for many months, and especially when it is carried out in its integrity, it exerts, as might be expected, a depressing influence on the whole nervous system of the convicts submitted to it."

And I would not wish to add any medical testimony more conclusive and forcible than that of Mr. Attfield, the Medical Superintendent of

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

the Western Australian Convict Establishment, who was, for a long time, Resident Surgeon at Millbank, where, with Dr. Baly, he must have obtained immense experience of its result, and who, on a special request from the government authorities to give his testimony as to it effects on the prisoners at Freemantle, thus reports:

"In a medical point of view, I think there can be no question but that separate or solitary confinement *acts injuriously from first to last on the health and constitution of anybody subjected to it*, the symptoms of its pernicious constitutional influence being consecutively, pallor, depression, debility, infirmity of intellect, and bodily decay. The first three follow very speedily: the remaining two are gradual, slow, and insidious in their approach, but tend, sooner or later, according to the predispositions of the individual, and the duration of the separate confinement, to imbecility and consumption."*

Except as affording the initiatory means of prison training, and forming the first step in the ladder of ascension, by self-control and exertion, I entertain the settled conviction that separate confinement is useless, if not worse; that the reformatory effects attributed to it are a delusion, and that, instead of softening the heart, its permanent though frequently unappreciated result is softening of the brain. I am aware that my opinion on this subject differs from that of some high authorities entitled to respect; but I cannot resist the result of my own observation as to the effect produced by it; nor can I for one moment think that the lengthened seclusion of men from any association with their fellow-beings, whose minds are not set on contemplation, self-examination, or profitable reflection, can be regarded as a panacea for criminal tendency.

When their Lordships, therefore, apparently recommend that all gaol punishments should be carried out entirely upon the principle of separation, it is well to take cognizance of the physical and mental results which may follow from a succession of such sentences,—as too frequently occurs—upon the class of persons undergoing them. Separate cells are both a boon, and a means of effectual restraint and discipline to criminals, from which work in association, guarded by proper supervision, is the natural relief; but it is proposed to admit no relaxation of the rule at work, or even "in school, in chapel, or at exercise." As regards separation in chapel, the

* Further correspondence on Convict Discipline and Transportation, 1862, page 63.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

Report is as far in advance of the evidence as in respect of hard labour. The opinions of the two Inspectors of Prisons, of Sir Joshua Jebb, and Sir Walter Crofton, are all against separation in chapel, as well as that of the majority of Prison Governors examined; but, in spite of this, the Committee, not considering their objections valid,

"Recommend that the separate system should be carried out in the Chapel as well as in every other part of the prison."

It is the practical testimony of many of those who have tested it that these separate chapel stalls encourage rather than prevent communication; but, irrespective of this, the very idea of bringing together human beings for religious worship, into the presence of the Divine Being kennelled up like so many dogs, is offensive to the simplest religious instinct. This barbarous practice has been already *abolished* after experience and due consideration, at Pentonville, by Sir Joshua Jebb; at Mountjoy Prison, by Sir Walter Crofton; and at Wakefield by the Magistrates.

There is only one other question touched upon in the Lords' report, upon which it is necessary to comment, and that relates to their estimate of the *utility* of "industrial employment," they say,

"The extent and value of that moral influence which industrial employment exercises upon the mind of a prisoner is a matter which is much debated, but which is obviously not susceptible of direct proof."

It being taken for granted that prisoners inherit our common nature, their Lordships' objections on this head seem best answered by a reference to the words "*in the sweat of thy brow shalt thou eat bread*," wherein the moral influence and purpose of industrial employment were once and for ever announced.

It is, however, very difficult to see why public money should be so profusely lavished in striving to attain a system of unnatural retribution for crime, when the simple and natural method is ready to our hand. Our gaols do not seem to require much encouragement to unproductiveness, although there is no reason that they should not be made, through industry, in great part to pay their own expenses.*

* The West Riding Prison, at Wakefield is a remarkable proof of what results may be produced by assiduous application to industrial employment. The Governor informs me that the total profits on prisoners' labour during

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

The Judicial Statistics shew that during 1862 there was an average of 18,033 prisoners in custody in the several gaols. The entire cost of these establishments was £527,790, and the expenditure on food alone was £123,352; but the profit on prisoners' labour only amounted to £27,101, or not a fourth part of the price of the food consumed. In the Public Works Convict Prisons for the same year, 3,334 convicts are stated to have done work for the nation of the value of £100,130. The difficulty of utilizing prisoners' labour in gaols would be entirely overcome, if the system of sentences was altered, and public works partially had recourse to. For instance, there can be no reason that the terms of minor sentences should not go at once from six months to a year, and all intermediate ones be abolished. The place for carrying out one sentence is almost always inapplicable to the satisfactory fulfilment of others; and if this change were made, it would be very possible to adopt a uniform system of public labour for carrying out the longer sentences in a few district prisons scattered over the land. For myself, I can see no reason whatever, why hulks should not be made use of for the purpose. They have, certainly got a bad name, which, crowded and fitted up as they always were, in addition to occasional lax discipline,* was undoubtedly deserved at the time; but it would be a pity to renounce permanently the use of a most convenient and inexpensive means of rendering prisoners' labour available on account of a bugbear. There is no reason that a hulk should not be formed into as good a separate prison at least as any of the new public works prisons, provided it is not crowded. Its moveableness is a great feature of its use, and on the principle upon which I would divide it into entirely separate cells, it would serve every purpose of discipline. If the three years penal servitude sentences are done away with, there will be the more necessity for carrying out some such scheme as this, for turning the labour of gaol prisoners to account.

the past year amount to £8,969, being about £10 per prisoner for those so engaged.

* Nor was this at all invariably the case. I suppose a better disciplined establishment than the Warrior Hulk, under Captain Rose, now governor of Portsmouth, it would be difficult to find. We have got rid of a cheap and useful appliance in the great criminal difficulty by the old plan of "giving a dog a bad name."

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

I shall now endeavour briefly to sum up some of the most important points of the entire subject in which improvements are feasible and urgently demanded; and as regards convicts, I would suggest:

1. That the entire scale of the food of convicts should be reduced to the lowest standard consistent with the maintenance of a physical condition equal to the performance of hard labour, and that while certain *changes* might be given as an encouragement to those advanced to certain classes, all costly indulgences should be discarded from the dietary.*

2. That the convict's labour should in duration be increased from what it is at present to an average rate of *eleven hours per diem, throughout the year*; labour upon public works being so supplemented by useful employment in the prisons as to give this; and thereby saving the necessity of keeping a large body of prisoners at in-door labour for purposes which could as well be secured by evening employment in a properly constructed and lighted prison. This period of labour to be irrespective of the time occupied in mustering, going to and from work, which falls properly under the head of exercise.

3. That the convicts'† sleep should be uniformly limited to eight hours, the limit the Lords' Committee recommend for prisoners in gaols.

4.‡ That gratuities should be given only for proved exertion and

* It is very satisfactory to find that the views of the Directors of Convict Prisons have advanced in this respect under the chairmanship of Colonel Henderson. They say, in the correspondence just published, "The Dietary we propose, so far as the best medical opinion we can obtain, to *reduce* to a scale only sufficient to maintain the convicts in good bodily health, and enable them to perform their full amount of daily labour."

I cannot, however, but consider that there is a very great difference between "*changes*" and "*superfluity*" in convict dietary. The latter stands self-condemned in any punishment: but the former can be made very useful as encouragements, are not in principle wrong, and can be so regulated as to cause little or no extra expense.

† The period of sleep at Portsmouth Convict Prison is given as 9 hours and 15 minutes at the longest day, and 10 hours and a half at the shortest. I am prepared to be told of the increase of officers which some would consider necessary, but which I believe to be entirely a question dependent on the structural arrangement of the prisons, and proper classification.

‡ The Directors, in their letters of Sept. 15th and Nov. 6th, recommend that the maximum gratuity earned by *any* convict shall be £3. To give only



This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

industry; but that for these purposes they should be dispensed on a scale of real encouragement and liberality; a small portion being in the latter stages of the sentences, assigned as in Ireland, for the convict's own disposal as earned.

Admitting the insufficiency of the present minimum sentence of three years,* if the severity of the punishment can, as the Lord Chief Justice suggests, thus be legitimately increased without any sacrifice of reformatory influences, it would scarcely be necessary to do more than add a term of supervision to it for first offenders, and the perpetrators of less heinous crimes. But if we have done with criminals when they have been punished, and do not care to track the course of the "habitual offender;" or if we think to quiet the public by any ineffectual or half-system for this purpose, we had better at once renounce the attempt, and return to a scale of fixed sentences.†

this to the most industrious man, with the longest sentence, is certainly the furthest extreme from permitting a man with a "bad" general prison character to earn £8 8*s.* 1*d.* in less than four years, as has been the case.

But the Directors propose further, that they shall be "empowered to give a bonus of £3 to all men who, being well-conducted and industrious in prison, are placed under any Prisoner's Aid Society." Now, it appears to me that either the prisoners must have been very badly trained in the knowledge of good and evil, and as to their own self-interest, or there must be something very undesirable about these societies to render such a bounty necessary. I have known very good convicts refuse, on discharge, to have anything to do with the D. P. Aid Society, and for satisfactory reasons. Bribing a convict with £3 to let a D. P. Aid Society look after him is a very poor substitute for that "effective control and supervision, giving society a real protection," which the Royal Commission recommends.

* The increased cost involved by a minimum sentence of five years, as now proposed by the Government, in lieu of the seven years recommended by the Royal Commission over the present term of punishment—supposing that remission took place at three-and-a-half—would be on the 3 and 4 years sentences of 1862, an annual additional expense of £75,000, that is just half the expense estimated at page 30.

† Alluding to testing license-holders, Sir Walter Crofton says "I believe such a course, taken in connexion with supervision, would be the best that could be pursued. But, if, after due consideration, the government decline to take it, I shall then most devoutly hope that tickets of leave and remissions will be abolished altogether, and the plan recommended by me to the Committee of 1856 adopted."—*The Present Aspect of the Convict Question.*

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

The plan submitted by the Directors of Convict Prisons in their letter of the 15th of September, incomplete as it was,* seemed a step in the right direction; but the scheme which is now proposed, of merely giving a power of supervision over those ex-convicts whom they assist, to Discharged Prisoners' Aid Societies, is worse than nothing. The regulations of the Penal Servitude Acts Amendment Bill will be perfectly ineffectual as far as licenses are concerned, without a uniform and effective check by government, for what is everybody's business is notoriously nobody's business.

It would still be voluntary for the convicts to place themselves under the protection of these societies, and of course in proportion as their supervision was so far effective as to cause revocation of licenses, candidates for their assistance would decrease; those who refuse to seek their aid and require supervision most, being free from the least shadow of control. The two objects are obviously incompatible; and with the failure of supervision, remission of sentences must clearly be abolished.

On the other hand, a department, such as I suggested, peculiarly devoted to this purpose, making occasional use of the police where requisite, and treating the case of each convict according to his character and antecedents, would be uniform in its action; and could afford us those reliable statistics as to the subsequent career of the punished, which we have been wanting for so many years.

Whatever may be the course determined on in the matters of supervision, remission and length of sentences, it is certain that we must boldly confront the fact that our incorrigible criminals *must be kept at home.*† A more stringent system for the oft convicted is indispensable, and a distinct establishment must somewhere be founded for this purpose near our own shores.

* It was proposed by them that the Police should look after the discharged convicts only in London and the large towns, which would, of course, be an inducement to predetermined criminals to take up a country residence, giving towns the occasional benefit of their presence.—*See Appendix and Correspondence on Penal Servitude.*

† I find Captain O'Brien boldly advocating a resumption of the old plan of simple relief. He says that the *long sentenced and re-convicted*—i. e. the very worst—"should be detained (at a separate prison) for 12 months, and then removed to the convict ship, without passing through the public works prisons." That is, we are still to send out the unfiltered refuse.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

When these questions are settled, we shall have less difficulty in approaching that of our gaol discipline, into which many of the better parts of our convict system may with advantage be introduced, including many of the suggestions of the Lords' Committee; but excluding, I sincerely trust, any contrivance for breaking down, instead of expending, the physical energies of prisoners, or substituting machines for simply wearying and racking arms and legs, and creating spinal suffering, in lieu of natural and useful "hard labour" as the grand punitive element.

Whatever may be the complications and difficulties which surround the subject of Prison Discipline, or the entanglements in respect of sentences which we have now to unravel, such an opportunity was never before afforded for a "wise and understanding people" to solve the great vexed question of "criminal correction" in a philosophical, humane, and Christian spirit,

PRINTED BY G. F. SEWELL, DARLEY STREET, BRADFORD.

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms

This content downloaded from
149.50.216.243 on Tue, 10 Mar 2026 19:08:47 UTC
All use subject to https://about.jstor.org/terms